134-338

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 192.

MICHAEL GORMLEY, APPELLANT,

vs.

ALFRED CORNING CLARK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 16, 1886.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, circuit judge of the United States for the seventh judicial circuit, on Wednesday, the ninth day of December, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and tenth year.

WM. H. BRADLEY, *Clerk*.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE, JOHN NUTT, JAMES S. DENNIS, *et al.* } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, ss:

Be it remembered that on the thirty-first day of March, 1884, came the complainant, by his solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs and petition in said above-entitled cause; which said bond and petition are respectively in the words and figures following, to wit:

2 UNITED STATES OF AMERICA
Northern District of Illinois:

Circuit Court. —— Term, A. D. 188–.

CLARK
v.
VILLAGE OF GLENCOE.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party to this action or to any of the officers of this court, and in default of payment by the plaintiff or ourselves of any costs ordered or adjudged to be paid by petitioner we agree that execution may issue against our property for any costs taxed against us or petitioner.

Dated this 31 day of March, A. D. 1884.

McCOY, POPE & McCOY.
CHARLES E. POPE.

(Endorsed:) Filed M'ch 31, 1884. Wm. H. Bradley, cl'k.

3 In the Circuit Court of the United States, Northern District of Illinois.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE; JOHN NUTT, JAMES S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, and George G. Hamilton, All Members of the Council of said Village of Glencoe; John L. Day, Clerk of said Village; Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson and Eloisa Johnson, Daniel J. Hubbard; Adolph Loeb, Trustee; James Bolton, Successor in Trust; Sarah J. Condon; Lyman Baird, Trustee; William H. Bradley and Lewis H. Boutell, Successors in Trust, and All Whom it May Concern.

Amended by leave of court by changing "Hamilton" to "Hall."

Petition under Burnt Record Act.

To the honorable the judges of the United States for the seventh judicial circuit, northern district of Illinois:

Your petitioner, Alfred Corning Clark, a citizen of the State of New York, brings this his bill of complaint against The Village of Glencoe, a corporation organized and existing under the laws of the State of Illinois and a citizen thereof; John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, and George G. Hamilton, all members of the council of the said village and all citizens of said State of Illinois;

Amended by leave of court by changing "Hamilton" to "Hall."

4 John L. Day, clerk of said village and a citizen of said State of Illinois; Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson, Eloisa Johnson, Daniel J. Hubbard; Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon; Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and all whom it may concern, all citizens of said State of Illinois.

And thereupon your petitioner complains and says—

That on or about the 14th day of October, 1882, he became, has been continuously ever since, and is now the owner in fee simple, absolute, free, and clear of all other liens, claims, and encumbrances of any name or nature of the following-described property:

Blocks number three (3), four (4), five (5); lots numbers three (3), four (4), five (5), six (6), eleven (11), and twelve (12), all in block six (6); blocks eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), in Gormley's Addition to Glencoe, in Cook county and State of Illinois.

That your petitioner derived title to said premises by descent, through his father, Edward Clark, now deceased, who died, as to said property, intestate on or about Oct. 14, 1882, your petitioner being the sole and only child and heir-at-law of his said father.

That said Edward Clark derived his title in fee simple absolute to said blocks four (4), five (5), and eight (8) to twenty-four (24), both inclusive, by trustee's deed, dated September 10th, 1878, with other property from Adolph Loeb, trustee, to said Edward Clark; which said deed was duly acknowledged and recorded in the recorder's office of said county; that said Edward Clark derived his title to said block number three (3) and to lots numbers three (3), four (4), five (5), six (6), eleven (11), and twelve (12), in said block number six (6), by quitclaim deed from Sarah J. Condon, single woman, dated July 26th, 1879, duly acknowledged and recorded in the recorder's office of Cook county, Illinois, August 9th, 1879; which said block three (3) and lots last mentioned in said block six (6) were also conveyed by said Sarah J. Condon by quitclaim deed to your petitioner, dated March 29th, 1884, and duly acknowledged said deed, being recorded March 31st, 1884, in said recorder's office.

That said Sarah J. Condon acquired title to said block number three (3) by trustee's deed from Adolph Loeb, trustee, dated September 10th, 1878, duly acknowledged and recorded in said recorder's office September 29th, 1879, and re-recorded March 31st, 1884.

That said Sarah J. Condon acquired title to said lots numbers three (3), four (4), five (5), six (6), eleven (11), and twelve (12) of said block number six (6) by trustee's deed, dated September 10th, 1878, to Sarah J. Condon, duly acknowledged and recorded in said recorder's office of Cook county, Illinois, September 29th, 1879, and re-recorded March 31st, 1884; that said Adolph Loeb acquired his title to said blocks and lots so mentioned by deed of trust, dated May 15th, 1877, from Michael Gormley and Eliza, his wife, Morton Culver and Eugenia M., his wife, joining therein to convey other property to said Adolph Loeb, as trustee, conveying said last-mentioned blocks and lots, a copy of which is hereto attached and made a part of this petition, marked Exhibit "A;" which said trust deed was duly re-corded in the recorder's office of said Cook county on May 18, 1877.

Your petitioner further attaches to this petition and makes the same a part thereof a copy, marked Exhibit "B," of the plat of said Gormley's Addition; which said plat was made by said Michael Gormley March 11, 1874, and duly acknowledged and recorded in the recorder's office of Cook county, Illinois, March 11, 1874, in Book 7 of Plats, page 36.

That said Michael Gormley acquired his title in fee simple absolute to said blocks and lots in Gormley's Addition, herein mentioned, by warranty deed, dated May 4th, 1861, from Marcus Gormley and Mary Gormley, his wife, to said Michael Gormley, conveying the southwest quarter of section seven (7), in fractional township forty two (42) north, range thirteen (13) east, of the third principal

meridian, in Cook county, Illinois, which included said blocks and lots in said Gormley's Addition last mentioned; which said deed was duly recorded in said recorder's office June 5th, 1861; that said Marcus Gormley acquired his title to said southwest quarter (¼) of section seven (7) by patent from the United States of America, dated March 10th, 1843, conveying said last-mentioned property; which said patent was duly recorded December 8th, 1845, in said recorder's office of Cook county, Illinois.

Your petitioner further shows unto your honors that on Oct. 8th and 9th, 1871, the public records of Cook county, Illinois, contained in the recorder's office of said county which showed the title and related to the lands and premises herein described as belonging to your petitioner were wholly destroyed by fire.

Your petitioner further shows unto your honors that said Michael Gormley, to cloud the title and diminish in value the property of your petitioner, on or about October 4th, 1881, procured to be passed by the then members of the council of the said village of Glencoe an ordinance, a copy of which is hereto attached, marked Exhibit "C," said Gormley claiming, as your petitioner is informed, that the passage of the same would greatly enhance the value of his, said Gormley's, property, in and by which said ordinance said council vacated Adams avenue between Grove street and Bluff street, as shown on said map marked Exhibit "B," the part of the said
8 street being so vacated lying directly between your petitioner's said blocks eight (8) and nine (9) and forming the sole means of ingress and egress by said Adams avenue to ten lots on the south side of said block eight (8) and ten (10) lots on the north side of said block nine (9), thus greatly injuring the salability and market value of said last-named blocks eight (8) and nine (9), said ordinance to take effect and be in force from and after its passage and posting ten days; that said ordinance was duly posted and a duly certified copy was procured by said Gormley, and, to further cloud and diminish in value the said blocks eight (8) and nine (9), recorded in the recorder's office of Cook county, Illinois, October 17th, 1881, by said Michael Gormley, as petitioner is informed. Your petitioner further shows unto your honors that said Michael Gormley, on or about the 3rd day of January, 1882, procured by the then members of the council of the village of Glencoe, by falsely and fraudulently representing to said council that he was the only party in interest who would be affected by said ordinance, the passage of an ordinance, a copy of which is hereto attached and marked Exhibit "D," wherein and whereby it was intended and sought to vacate Washington avenue between Grove street and Bluff street and Washington avenue between Valley street and Prairie street, Adams street between Valley street and Prairie street, Jefferson avenue, Madison avenue, Monroe avenue,
9 Jackson avenue, Bluff street between Adams avenue and Jackson avenue, Valley street between Adams avenue and Jackson avenue, Wood street between South avenue and Jackson avenue, Prairie street between South avenue and Jackson avenue, said ordinance to take effect and be in force from and after its pas-

sage and posting ten days. Said streets so sought to be vacated by said ordinance completely encircle and surround the land of your petitioner, and if the said — were thus vacated petitioner's land would be completely surrounded by said vacated streets, completely cutting off all ingress and egress to petitioner's property.

Your petitioner further shows unto your honors that said council, on or about January 12th, 1882, at a special meeting of said council, having ascertained that said representations by said Michael Gormley were false and untrue, the said council reconsidered the passing of said ordinance last mentioned and rescinded and annulled the same.

That said council, to cover any possible irregularity in calling said special meeting held on January 12, 1882, again, on the 24th day of January, 1882, reconsidered said passing of said ordinance of January 3rd, 1882, and on said 24th day of January, 1882, again duly annulled and rescinded said ordinance so passed January 3rd 1882.

Your petitioner further shows unto your honors that the council of said village of Glencoe, on or about February 7th, 1882,
10 passed another ordinance, in and by which said ordinance said council enacted that any and all ordinances heretofore passed by said council vacating any streets or parts of streets in said Gormley's Addition to Glencoe or purporting so to do were thereby repealed, and all the streets and parts of streets shown in the first and original recorded plat, being the plat heretofore mentioned, marked Exhibit "B," were thereby declared to be public streets; which said last-mentioned ordinance was duly published by duly posting the same, and a duly certified copy thereof on February 13th, 1882, duly recorded in the said recorder's office of Cook county, Illinois.

Your petitioner further shows unto your honors that said John L. Day, one of the defendants herein, never posted said ordinance of January 3rd, 1882, but that said Michael Gormley, one of the defendants herein, on or about January 14th, 1882, demanded a certified copy of said ordinance of January 3rd, 1882, intending to record the same in the recorder's office of Cook county, Illinois, and thereby cloud and damage the title to your petitioner's said lands owned by him and render said blocks worthless for all purposes of sale or use.

That said Day refused to furnish such copy unless he included therein a copy of the proceedings of said council rescinding said ordinance of January 3rd, 1882.

11 Your petitioner shows unto your honors that thereupon and thereafter said Michael Gormley himself copied the ordinance so passed January 3rd, 1882, and caused the said copy so by him made to be recorded in said recorder's office of Cook county, Illinois, attaching thereto an affidavit by said Michael Gormley that the same was a true copy, and that it had been posted up in three of the most public places in said village on January 24, '82, within thirty days after its passage, said Michael Gormley causing said copy to be so recorded to cloud and damage the title to the blocks

and lots as aforesaid owned by your petitioner and destroying the market value thereof.

Your petitioner further shows unto your honors that to further cloud and damage the title and diminish the market value of said blocks and lots so owned by your petitioner, and to obtain a copy of said ordinance of January 3rd, 1882, to record the same in the recorder's office of Cook county, Illinois, said Michael Gormley filed a petition in the superior court of Cook county, Illinois, setting forth the passage of said ordinance of January 3rd, 1882, and praying that said Day, defendant herein, be ordered and compelled to furnish him a certified copy of the same; that thereupon a writ of summons duly issued against and was served upon said Day, and he thereupon filed his answer to said petition denying the right of said Gormley to said writ of mandamus, and said Gormley filed
12 his replication to said answer; that thereupon such proceedings were had that — a regular term of said superior court said cause came to trial in said court, and evidence, both oral and documentary, was offered in said cause by both parties to such controversy, and by the due judgment and consideration of said court, a jury having been, by the agreement of the parties to said controversy, waived, said superior court found the issues in said cause for the said defendant, Day, and said writ of mandamus was refused.

That thereupon said Michael Gormley prayed an appeal from the judgment of said superior court to the appellate court of Illinois, for the first district thereof; which said appeal was allowed on filing his bond, with surety, in the sum of $200.00; which said bond was filed and appeal taken.

Your petitioner further shows unto your honors that such proceedings were thereupon had that on the 8th day of March, 1882, a duly certified copy of said proceedings in said superior court was filed in said appellate court, and said cause, at the March term of said appellate court, in the year 1882, having been duly argued by the counsel of both parties, by the due judgment and consideration of said appellate court said judgment of said superior court was duly and regularly confirmed and ratified in all respects; which said judgments of said superior and appellate courts were rendered on the merits and are still unreversed, valid, and binding upon all parties to said controversy and their privies in the place when rendered.

13 Your petitioner further shows unto your honors that Michael Gormley, still intending and purposing to further cloud and damage the title of said blocks and lots so owned by your petitioner and diminish their market value, threatens to procure by the present council of said village or the successors in office of said council the passage of another ordinance of the same tenor and effect of said ordinance of January 3rd, 1882, and Oct. 4th, 1881, and has stated to the agent of your petitioner that his agent has taken steps to procure such action; that to further cloud and injure said title to said blocks and lots said Michael Gormley threatens to procure from said clerk or his successor in office a certified copy of such ordinance so to be passed and to record the same in said recorder's office; that said Michael Gormley has fenced in said blocks and lots so owned

by your petitioner, and said streets and parts thereof so sought to be vacated, is in possession of and claims to have rights in the same, and purposes and threatens to keep possession thereof.

Your petitioner further shows unto your honors that said council had no right to pass such ordinances of October 4th, 1881, or January 3rd, 1882, nor said Day to furnish, as requested as aforesaid, a certified copy of the same, and that neither said council nor
14 its successors in office have any right to enact any such similar ordinance so sought to be procured to be passed by said Michael Gormley as aforesaid, and that said Day had no right to furnish any copy of said ordinance of January 3rd, 1882, nor of said ordinance of October 4th, 1881, and that neither he nor his successor in office has any right to furnish any copy of such ordinance, the passage of which is about to be sought to be procured by said Michael Gormley; that the said ordinances of vacation heretofore herein mentioned are utterly null and void, and that said ordinances and the record of the copies thereof recorded in said county are a cloud on the title to the lands of your petitioner so hereinbefore set out.

Your petitioner further shows unto your honors that he fears that said Michael Gormley, by himself or agents, will procure by the present council of the village of Glencoe or its successors in office the passage of an ordinance or ordinances vacating said streets or some portion heretofore herein mentioned as vacated, and will procure from said clerk or his successor in office a duly certified copy of such vacation ordinance so to be passed and will record the same in said recorder's office of Cook county, Illinois, unless restrained by an injunction of this court, and thus cloud the title of the lots and blocks mentioned so as aforesaid and owned by your petitioner and diminish and destroy the market value thereof.

Your petitioner further shows unto your honors that it is
15 the common report and rumor in said village of Glencoe that said Michael Gormley and his friends are striving to procure the election of members of the council of said village at the election to be held on the 1st Tuesday in April next who will pass and enact such ordinance and ordinances of vacation so to be sought to be procured to be passed by said Michael Gormley, and it is the current report, talk, and rumor in said village that the said election will turn largely upon the issue of passing or not passing such ordinance or ordinances of vacation.

Your petitioner further shows unto your honors that the defendants, Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson, Eloisa Johnson, Daniel J. Hubbard, Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon, Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, have claimed or now claim some interest in and to said lots and blocks owned by your petitioner, as before mentioned, by conveyance since October 8 and 9, 1871, or otherwise, or have joined in deeds conveying part or the whole of said premises of your petitioner since Oct. 8 and 9, 1871, but such interest, if any, is subordinate and subject to the title of your petitioner as aforesaid.

16 Amended by leave of court by changing "Hamilton" to "Hall."

To the end, therefore, that the said Village of Glencoe, John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Legare, George G. Hamilton, John L. Day, Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson, Eloisa Johnson, Daniel J. Hubbard, Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon, Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and all whom it may concern, who are hereby made parties defendant to this petition, may, if they can, show why your petitioner should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective remembrances, information, and belief, full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and charged, but not under oath, their respective oaths being hereby expressly waived;

That the said ordinances of January 3rd, 1882, and October 4th, 1881, and the copies thereof, so as aforesaid recorded in the recorder's office of Cook county, Illinois, be declared null and void and no effect whatever; that at the final hearing of this cause a decree may be entered confirming and establishing in your petitioner in fee simple absolute, free, and clear of all liens and encumbrances whatsoever, the title to said lots and blocks so aforesaid mentioned as owned by your petitioner; that in and by such decree the United States marshal for the northern district of Illinois be ordered and directed to remove said Michael Gormley, his agents and attorneys, and all other persons whatsoever, from the possession of said lots and blocks so owned by your petitioner and

17 place in possession of the same your petitioner and his agents; that the said defendants The Village of Glencoe, the said John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Legare, George G. Hamilton, members of the said council, each and all of them, and their successors in office, may be restrained and prohibited by the writ of injunction of this honorable court, until the further order of this court, from enacting and passing any ordinance or ordinances vacating any street or streets or part or parts of streets next adjoining the said lots and blocks so as aforesaid mentioned as owned by your petitioner without the consent of your petitioner or his future grantee or grantees, if any, or vacating any street or streets the vacation of which will prevent ingress or egress therefrom to the lots and blocks mentioned as owned by your petitioner so as aforesaid without the consent of your petitioner and his future grantee or grantees, if any; that the said John L. Day and his successor in office may be likewise and in like manner restrained and prohibited from furnishing any copy of any such ordinance or ordinances the passage of which is hereby prayed to be enjoined;

That the said Michael Gormley, his agents, attorneys, and solicitors, may be likewise and in like manner prohibited and restrained from applying to said village or such council members thereof,

their or its successors in office, for the passage of such ordi-
18 nance or ordinances the passage of which is hereby asked to be restrained and prohibited, and from procuring the passage of such ordinance or ordinances or from recording in the recorder's office of Cook county, Illinois, any copy or copies of any such ordinance or ordinances.

That at the final hearing of this cause said injunction so prayed for be made perpetual—

May it please your honors to grant unto your petitioner the writ of injunction, issuing out of and under the seal of this honorable court, to be directed to said defendants to this petition and to their counsel, attorneys, solicitors, and agents, therein and thereby commanding and strictly enjoining said defendants and their respective counselors, attorneys, solicitors, and agents, in manner aforesaid; and may it please your honors to grant unto your petitioner the writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the marshal of this district, directing and commanding him that he summon the said defendants, The Village of Glencoe, John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Legare, George G. Hamilton, John L. Day, Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson, Eloisa Johnson, Daniel J. Hubbard, Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon, Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and all whom it may concern—

By leave of court amended by changing "Hamilton" to "Hall."

19 That they and each of them be and appear before this honorable court, at a time to be therein fixed, at the court-house, in the northern district of Illinois, to make answer to this petition and to perform and abide the orders and decrees of this court.

And your petitioner prays for such other and further relief as to equity and good conscience appertains and as to your honors shall seem meet; and your petitioner will ever pray, &c.

ALFRED CORNING CLARK,
By THOS. E. PATTERSON, *His Agent.*

McCOY, POPE & McCOY,
Solicitors for Petitioner.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

Frank C. Smith, having been duly sworn, doth depose and say that he has read the foregoing petition, and that the same is true except as to facts therein stated on information and belief, and as to these he believes it to be true; that he is an agent of petitioner and makes this affidavit for and on his behalf.

FRANK C. SMITH.

Subscribed and sworn to before me this 31st day of March, 1884.

E. A. DRUMMOND,
U. S. Com'r.

20 "EXHIBIT A."

This indenture, made this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven (1877), between Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, of Glencoe, in the county of Cook and State of Illinois, party of the first part, and Adolph Loeb, of the city of Chicago, county of Cook, and State of Illinois, party of the second part, as trustee, as hereinafter specified (and in case of the death, absence, or removal from said county of Cook, refusal or inability to act of said party of the second part, then James Bolton, of said city of Chicago, shall be, and he is hereby, appointed and made successor in trust to said party of the second part under this deed for the uses and purposes hereinafter expressed, with the same power and authority of said trustee), witnesseth:

That whereas the said Morton Culver and Michael Gormley are justly indebted to —— —— in the sum of ten thousand dollars, secured to be paid by their one certain promissory note, bearing even date herewith, payable to the order of themselves and by them indorsed, and due three (3) years after date, for the sum of ten thousand ($10,000) dollars, with interest at the rate of nine (9%) per cent. per annum, payable semi-annually, the several semi-annual interest installments being evidenced and secured by their six notes of even date herewith, payable to the order of themselves and by them endorsed, and due respectively in six (6), twelve (12), eighteen (18), twenty-four, (24), thirty (30), and thirty-six (36) months after date, for the sum of four hundred and fifty ($450.00) dollars each, with interest at the rate of ten per cent. per annum after due, and payable at the Chemical National Bank of New York;

And whereas the said party of the first part are desirous of securing the prompt and full payment of said promissory notes and interest that may accrue thereon, in whose hands soever the same may be:

Now, therefore, the said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed, have and do hereby grant, bargain, sell, and convey unto the said party of the second part, his successor in trust aforesaid, and his and their heirs and assigns, all the following-described lands and premises situate in the town of New Trier, county of Cook, and State of Illinois, to wit: All of blocks number three (3), four (4), five (5), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), and lots number-three to twenty-two (3–22), both inclusive, in block number six (6), all in Gormley's Addition to Glencoe; also lots number one (1), two (2), three (3), four (4), five (5), six (6), fifteen (15), sixteen (16), nineteen (19), twenty (20), twenty-one (21), and twenty-two (22), in block number two (2), and all of block

number three (3) and lots number one to sixteen (1–16), both inclusive, in block number six (6), all in Culver and Johnson's
21 Addition to Glencoe, Cook county, Illinois; to have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his successor in trust aforesaid, and his heirs and their heirs and assigns, forever; in trust, nevertheless, that in case of default in the payment of the said promissory notes or either of them or any part thereof according to the tenor and effect of said notes, or in case of waste or non-payment of taxes or assessments, or neglect to procure or renew insurance as hereinafter provided, or in case of the breach of any of the covenants or agreements herein mentioned, then and from thenceforth it shall be lawful for the said party of the second part or his successor in trust, on application of the legal holder of said promissory notes or either of them, to enter upon, possess, hold, and enjoy the above-granted premises, and either with or without such entry to sell and dispose of said premises hereby granted, and all right, title, benefit, and equity of redemption of said party of the first part, their heirs and assigns, therein, at public auction, at the north door of the Chamber of Commerce, in the city of Chicago, in the State of Illinois, or on said premises, or on such place as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, thirty days' previous notice of such sale having been given by publication once in each week for four successive weeks in the Chicago Legal News, or in any newspaper at that time published in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale and the purchase-money paid thereon, after first paying all costs of advertising, sale, and conveyance, including the reasonable fees and commissions of said party of the second part, attorney's fees, and all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with interest thereon at ten per cent. per annum, then to pay the principal of said notes, whether due and payable by the terms thereof or not, and interest on said notes up to the time of such sale, rendering the overplus (if any) unto the said party of the first part, their legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money; which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid or any part thereof by, from, through, or under said party of the first part or any of them.

And in case of a foreclosure of this trust deed, as provided by section thirteen of an act of the General Assembly of the State of Illinois, entitled "An act to revise the law in relation to mortgages of real and personal property," approved March 26th, 1874, or under any law of this State, upon default and application made to the

said party of the second part or his successor in trust as aforesaid, by any *cestui que trust* under this deed, it shall and may be lawful for the said party of the second part, in his own name or otherwise, by suit in any court of competent jurisdiction, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purposes herein specified by said party of the second part as such trustee or as special commissioner under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, including his reasonable charges as attorney and solicitor therein, in addition to and besides the costs of advertising, sale, conveyance, and moneys advanced, with interest, as above provided, and also all attorneys' fees incurred by the legal holder of said notes on behalf of the collection thereof, by sale or otherwise, then to pay the amount found by the court to be due and payable upon the indebtedness aforesaid; and in case of any suit or proceeding at law or in equity wherein said party of the second part shall be made a party by reason of his trusteeship under this deed he shall be allowed and paid his reasonable costs, charges, attorney's and solicitor's fees in such suit or proceeding by said party of the first part, and the same shall be a further charge and lien upon said premises under this deed, to be paid out of the proceeds of sale thereof, if not otherwise paid by said party of the first part.

And in case of the appointment by any court of a new trustee to execute the trust hereby created the sum of two hundred $\frac{00}{100}$ dollars for the attorney's or solicitor's fee of the petitioner in such proceeding and all other expenses of such appointment and the execution of said trust shall be allowed and taken from the proceeds of the sale of said premises.

22 And in consideration of the money paid as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part do hereby release and waive all right under and benefit of the exemption and homestead laws of the State of Illinois in and to the lands and premises aforesaid and the proceeds of sale thereof, and agree to surrender up possession thereof to the purchaser or purchasers at such sale peaceably on demand.

And the said party of the second part, with or without readvertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time at his discretion, and also to sell the said premises entire, without division, or in parcels, as he may prefer or think best.

And the said Morton Culver and Michael Gormley, for themselves and their heirs, executors, administrators, covenant and agree to and with the said party of the second part, his successor in trust hereinbefore named and their assigns, that at the time of the ensealing and delivery of these presents they are well seized of said premises in fee simple, and have good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances what-

soever; that the said party of the first part will in due season pay all taxes and assessments on said premises, and exhibit once a year, on demand, receipts of the proper persons to said party of the second part showing payment thereof until the indebtedness aforesaid shall be fully paid, and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness insured in such com, any or companies as the holder or holders of said notes may from time to time direct for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said party of the first part, and will assign, with proper consent of the insurers, the policy or policies of insurance to said party of the second part as further security for the indebtedness aforesaid; and in case of the refusal or neglect of said party of the first part or either of them thus to insure or assign the policies of insurance or to pay taxes said party of the second part or his successor in trust or the holder of said notes or either of them may procure such insurance or pay such taxes, and all moneys thus paid, with interest thereon at ten per cent. per annum, shall become so much additional indebtedness secured by this deed of trust and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part.

Upon maturity of the within-named indebtedness the owner of any lot or lots included in the property hereinbefore conveyed may have the same released from this deed of trust upon payment on account of said indebtedness at the rate of twenty-five ($25.00) dollars per lot and all accrued and unpaid interest on said amount of twenty-five dollars.

In case of full payment of all the indebtedness aforesaid prior to any sale of the lands and premises above described or any part thereof and a performance of the covenants and agreements herein made to be performed by the said party of the first part, then a reconveyance to be made to the said party of the first part, their heirs or assigns, at their expense; and in case any notice of sale of said premises or any part thereof shall be published, and the said indebtedness shall be paid after any such publication and before sale, the said party of the first part shall pay for such publication, and also attorney's and trustee's fees for services and all expenses therein to the date of such payment.

And it is stipulated and agreed that in case of default in any of said payments of principal or interest, according to the tenor and effect of said promissory note- aforesaid or either of them or any part thereof, or of a breach of any of the covenants or agreements herein by the party of the first part, their executors, administrators, or assigns, then and in that case the whole of said principal sum hereby secured and the interest thereon to the time of sale may at once, at the option (without notice thereof to said party of the first part, their heirs, assigns, or legal representatives) of the legal holder thereof, become due and payable and the said premises be sold in the manner and with the same effect as if the said indebtedness had matured.

And said party of the first part, for themselves and their heirs and assigns, do further covenant and agree to and with said party of the second part, his successor in trust aforesaid and his heirs and their assigns, that in case of a sale and conveyance as aforesaid of said premises any deed or deeds of conveyance made in pursuance of such sale shall be *prima facia* evidence of the due compliance with and performance of the terms, conditions, and requirements of this deed of trust by the party of the second part or his successor in trust aforesaid in advertising and making such sale and conveyance, to the extent of the recitals contained in such deed or deeds.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

MICHAEL GORMLEY. [SEAL.]
ELIZA GORMLEY. [SEAL.]
MORTON CULVER. [SEAL.]
EUGENIA M. CULVER. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

——— ———.

23 [Endorsed:] 22352. Deed of trust. Morton Culver and wife and Michael Gormley & wf. to Adolph Loeb. For use ———. State of Illinois, county of Cook, *ss:* No. 135,434. This instrument was filed for record in the recorder's office of Cook county aforesaid on the 18th day of May, A. D. 1877, at 3 o'clock p. m., and recorded in Book 758 of Records, on page 232. Jas. W. Brockway, recorder. A. Loeb & Bro., financial agents, Chicago, Illinois.

The premises securing the notes herein described were sold this day, pursuant to notice, for the aggregate sum of eight thousand eight hundred and forty-eight $\frac{50}{100}$ dollars, to the following parties and for the respective sums, to wit:

To Edward Clark for	$6,711 —
" S. J. Condon "	600 —
" S. J. Condon "	657 50
" W. H. Stubbings for	785
" A. H. Hovey "	95
	$8,848 50

Chicago, September 10th, 1878.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Nelson Culver, a notary public in and for the said county, in the State aforesaid, do hereby certify that Morton Culver and Eugenia M. Culver, his wife, and Michael Gormley and Eliza Gormley, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and ac-

Nelson Culver, Notarial Seal, Cook County, Illinois.

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knowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this eighteenth day of May, A. D. 1877.

NELSON CULVER,
Notary Public.

(Here follows map marked p. 24.)

25 EXHIBIT "C."

Be it ordained by the council of the village of Glencoe:

SEC. 1. That Adams avenue, between Grove street and Bluff street, in Gormley's Addition to Glencoe, as recorded March 11th, 1874, in Book 7 of Plats, page 36, be, and the same is hereby, vacated.

SEC. 2. That this ordinance shall take effect and be in force from and after its passage and posting 10 days.

25a EXHIBIT "D."

SECTION I. That the following streets and parts of streets as laid out on a plat entitled Gormley's Addition to Glencoe, being a subdivision of the southwest quarter of section seven and the west half of the northeast quarter of the northwest quarter of section eighteen, being all in township forty-two, range thirteen, in Cook county and State of Illinois, and filed for record in the recorder's office of Cook county and State of Illinois, March 11th, 1874, in Book Seven of Plats, page thirty-six:

1. Washington avenue between Grove street and Bluff street, and Washington avenue between Valley street and Prairie street.
2. Adams avenue, between Valley street and Prairie street.
3. Jefferson avenue.
4. Madison avenue.
5. Monroe avenue.
6. Jackson avenue.
7. Bluff street, between Adams avenue and Jackson avenue.
8. Valley street, between Adams avenue and Jackson avenue.
9. Wood street, between South avenue and Jackson avenue.
10. Prairie street, between South avenue and Jackson ave-

25b nue, be, and the same is [are], vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

Endorsed: Filed Mar. 31, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the 31st day of March, 1884, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal thereto attached, are in the words and figures following, to wit:

25c UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the Village of Glencoe, John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, and George G. Hamilton, all members of the council of said village of Glencoe; John L. Day, clerk of said village; Michael Gormley, Eliza Gormley, Morton Culver, Eugene M. Culver, James N. Johnson, and Eloisa Johnson, Daniel J. Hubbard; Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon; Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of May next, to answer the bill of complaint of Alfred Corning Clark, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at [SEAL.] Chicago aforesaid, this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 108th year.

WM. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

25d I hereby accept service for the within-named Sarah J. Condon.

April 15, 1884.

WM. H. CONDON,
Her Attorney.

26 *Special Deputy's Return.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Know all men by these presents that I have appointed and by these presents do appoint Geo. N. Jones my true and lawful deputy to execute the annexed writ, Alfred C. Clark *vs.* The Village of Glencoe *et al.*, and to make return of the execution thereof according to law.

A. M. JONES,
U. S. Marshal for the Northern District of Illinois. [SEAL.]

I have served the annexed writ in the following manner, to wit: Upon John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etlen, and George G. Ligare, members of the council of the village of Glencoe; John L. Day, clerk of said village of Glencoe, and Morton Culver, within named, by delivering to each of them a true copy of the same on the 31st day of March, A. D. 1884; also upon the village of Glencoe by delivering a true copy hereof to George G. Ligare, president of the council of said village of Glencoe, on the 31st day of March, 1884; also upon Eugenia M. Culver by leaving a true copy for her at her usual place of abode, with Morton Culver, on the 31st day of March, A. D. 1884; also upon Michael Gormley and Granville D. Hall (called in this writ George S. Hamilton), said George G. Hall being a member of the council of the village of Glencoe, on the 1st day of April, A. D. 1884; Daniel J. Hubbard on the 14th day of April, A. D. 1884; Lyman
27 Baird, trustee, on the 15th day of April, A. D. 1884; James Bolton, successor in trust, on the 17th day of April, A. D. 1884; William H. Bradley and Louis H. Boutelle, successors in trust, on the 8th day of April, A. D. 1884; Adolph Loeb, trustee, on the 15th day of April, A. D. 1884; Eliza Gormley, on the 3rd day of May, A. D. 1884, by delivering to each of them a true copy thereof on the above-mentioned days; also upon Sarah J. Condon by delivering a true copy thereof to Wm. H. Condon, her attorney-in-fact, and by his acceptance of service hereon endorsed.

I did not serve the other defendants therein named, being unable to find — within my district.

A. M. JONES,
United States Marshal,
By GEO. N. JONES,
Special Deputy.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

Geo. N. Jones, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him in addition to the fees was actually incurred, and that the same is according to law.

GEO. N. JONES.

Subscribed and sworn to before me this 16 day of June, A. D. 1884.

[SEAL.] SAMUEL C. HAYES,
Notary Public.

(Endorsed:) Filed June 17th, 1884. Wm. H. Bradley, cl'k.

28 On the same day, to wit, on the thirty-first day of March, in the adjourned March term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

And now comes the petitioner in said cause, by McCoy, Pope and McCoy, his solicitors, and the defendants, The Village of Glencoe, John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Legare, George G. Hamilton, and John L. Day, by N. F. Fitch, their solicitor; and the court having read the petition, on motion of petitioner's solicitors, it is ordered that a temporary injunction issue in said cause against said defendants mentioned in said order, in accordance with the prayer of said petition, until further order of the court.

On the same day, to wit, on the 31st day of March, 1884, there issued out of said clerk's office a writ of injunction in said entitled cause; which said writ, together with the return of the marshal thereto attached, are in the words and figures following, to wit:

29 *Injunction Writ.*

Circuit Court of the United States of America, Northern District of Illinois, *ss:*

The United States of America to the Village of Glencoe, John Nutt James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, George G. Hamilton, and John L. Day, and to your counselors, attorneys, solicitors, trustees, and agents, and to each and every of them, Greeting:

Whereas it hath been represented to the judges of our circuit court of the United States for the northern district of Illinois, in chancery sitting, on the part of Alfred Corning Clark, complainant, in his certain bill of complaint exhibited in our said circuit court, on the chancery side thereof, before the judges of said court, against you, the said defendants above named, to be relieved touching the matters complained of, in which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience; and it being ordered that a writ of injunction issue out of said court upon said bill enjoining and restraining you and each of you as prayed for in said bill, we, therefore, in consideration thereof and of the particular matters in said bill set forth, do strictly command you, the said above-named defendants and their successors in office, and *to* your counsellors, attorneys, solicitors, trustees, and agents, and each and every of you, that you do
29*a* absolutely desist and refrain from enacting and passing any ordinance or ordinances vacating any street or streets or part

or parts of streets next adjoining the lots and blocks owned by said complainant and particularly described in said bill, without the consent of said complainant or his grantee or grantees, if any, or vacating any street or streets the vacation of which will prevent ingress or egress therefrom to the lots or blocks mentioned as owned by said complainant as aforesaid, without the consent of said complainant and his future grantee or grantees, if any; that the said John L. Day and his successor in office be, and he is hereby, restrained and prohibited from furnishing any copy of such ordinance or ordinances until this honorable court, in chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the marshal of the northern district of Illinois to execute and return in due form of law.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, in said district, this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred & eighth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Special Deputy's Return.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Know all men by these presents that I have appointed and by these presents do appoint George N. Jones my true and lawful deputy to execute the annexed writ, A. C. Clark *vs.* The Village of Glencoe *et al.*, and to make return of the execution thereof according to law.

A. M. JONES, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit: Upon John Nutt, James S. Dennis, Frank M. Van Etten, Augustus H. Hovey, George G. Ligare, John L. Day, clerk of the village of Glencoe, by personally delivering to each of them a true copy of the same on the 31st day of March, A. D. 1884; also upon the village of Glencoe by delivering a true copy of the same to George G. Ligare, president of the council of the village of Glencoe, on the 1st day of April, A. D. 1884; also upon Granville D. Hall, named in this writ George G. Hamilton, by delivering to him a true copy of the same on the 1st day of April, A. D. 1884.

I did not serve the other defendant therein named, being unable to find — within my district.

A. M. JONES,
United States Marshal.
By GEO. N. JONES,
Special Deputy.

32 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Geo. N. Jones, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him, in addition to the fees, was actually incurred, and that the same is according to law.

GEO. N. JONES.

Subscribed and sworn to before me this 16 day of June, A. D. 1884.

[SEAL.] SAMUEL C. HAYES,
Notary Public.

(Endorsed:) Filed June 17, A. D. 1884. Wm. H. Bradley, c'k.

Afterwards, to wit, on the fifth day of May, 1884, came Michael Gormley, Morton Culver, and Eugenia Culver, by their solicitor, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

33 In the United States Circuit Court for the Northern District of Illinois.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } Bill.

I hereby enter the appearance of Michael Gormley, Morton Culver, and Eugene M. Culver, three of the defendants in the above-entitled cause, and ask for the usual time in which — plead, answer, or demur.

MORTON CULVER,
Sol'r for said Def'ts.

(Endorsed:) Filed May 5, 1884. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the second day of June, 1884, came Michael Gormley and Eliza Gormley, by their solicitor, and filed in said clerk's office their demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

34 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the U. S. Circuit Court. June Term, 1884.

ALFRED CORNING CLARK
vs.
VILLAGE OF GLENCOE *et al.* } In Chancery.

The demurrer of Michael Gormley and Eliza Gormley, two of the defendants, to the bill of complaint of Alfred Corning Clark.

These defendants, by protestation, not confessing or acknowledging

all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to said bill of complaint, and for special causes of demur- shows unto this court—

1st. That complainant does not show by his said bill of complaint that the matters in controversy are such as to give this court jurisdiction.

2nd. Complainant does not show by his said bill that he is entitled to any relief under the so-called burnt records act. For aught that appears he has the original deeds & patents in his possession or under his control, or can procure duly certified copies thereof
35 & have his full remedy at law.

3. That said bill does not show that any legal plat of so-called "Gormley's Addition to Glencoe" was ever recorded, as required by law.

4. Said bill does not show that the several alleged streets and avenues or any of them were ever used as public streets or avenues or were ever accepted or acknowledged by the village of Glencoe.

5. That said bill shows that as to the several alleged streets and avenues complainant is barred from the relief asked by the several statutes of limitation of the State of Illinois.

6. That the council of the village of Glencoe has an absolute right to vacate any and all streets and alleys in said village under the statutes of Illinois; and upon vacating the streets and avenues in said bill mentioned this defendant, Michael Gormley, became immediately vested with an absolute right to such land, and if complainant suffered thereby his remedy is at law against said village.

7. That the passage and recording of said several ordinances of vacation is not a cloud upon the title of complainant to the several lots and blocks in Gormley's Addition to Glencoe, as set up in complainant's bill.

8. That complainant is not in law entitled to the relief praying such ordinances of vacation to be declared null and void.

36 9. That complainant has his full remedy, if any he is entitled to, at law.

10. That he is not entitled at law to the relief praying this court to order the marshal to put complainant in possession of the lots and blocks claimed in his said bill as belonging to him—his remedy at law.

11. Complainant has no right in law for any injunction restraining the village of Glencoe from vacating the streets mentioned, or restraining these defendants or any of them from requesting such council to vacate them or any of them.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained, and prays the judgment of this court whether they shall be compelled to make any further or other answer to the said bill of complaint, and they pray to be dismissed with their reasonable costs in this behalf sustained.

By MORTON CULVER,
Their Solicitor.

I hereby certify that, in my opinion, the foregoing demurrer of Michael Gormley and Eliza Gormley to the bill of complaint of Alfred Corning Clark, complainant, is well founded in law
37 and proper to be filed in the above cause.

WILLIAM C. WILSON,
Of Counsel for said Defendants.

Michael Gormley, one of the defendants, on oath states that he has read the foregoing demurrer to the bill of complaint of Alfred Corning Clark in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

MICHAEL GORMLEY.

Subscribed and sworn to before me June 2nd, 1884.

H. S. STODDARD,
U. S. Com'r.

(Endorsed:) Filed June 2, 1884. Wm. H. Bradley, cl'k.

38 Afterwards, to wit, on the fourteenth day of June, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

And now comes the petitioner, Alfred Corning Clark, by McCoy, Pope & McCoy, his solicitors, and upon their motion it is ordered by the court that publication be made by the clerk of this court of notice to said defendants, as required by section seventeen (17), chapter 116, Hurd's Revised Statutes of Illinois, and copies thereof be sent to James N. Johnson and Eloisa Johnson, his wife, at Northfield, Washington county, Vermont, within ten days after the first publication of said notice, and that he file his certificate of sending such notices in said cause.

On the same day, to wit, on the fourteenth day of June, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

39 ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

And now comes the petitioner, Alfred Corning Clark, in said cause, by McCoy, Pope & McCoy, his solicitors, and moves the court for leave to amend his petition filed herein by changing the name

of the defendant George G. Hamilton to George G. Hall without prejudice to the injunction heretofore granted in said cause, which motion is granted without prejudice to said injunction, and thereupon complainant so amends his bill.

On the same day, to wit, on the fourteenth day of June, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

And now comes the petitioner, Alfred Corning Clark, by McCoy, Pope & McCoy, his solicitors, and it appearing to the court from proofs herein filed that this suit is brought to enforce legal
40 and equitable claims of said petitioner against real property situated within the northern district of Illinois, and that James N. Johnson and Eloisa Johnson, his wife, two of the defendants to said suit, are not inhabitants of nor found within the said district and do not voluntarily appear in said suit, the court, on motion of said McCoy, Pope & McCoy, hereby orders and directs that said James N. Johnson and Eloisa Johnson, his wife, appear and plead, answer, or demur to the petition of said Alfred Corning Clark filed herein by the first Monday of October, 1884; and the court hereby orders and directs that the said defendants, James N. Johnson and Eloisa Johnson, be each served with a certified copy of this order within at least twenty (20) days before said first Monday of October, 1884.

Afterwards, to wit, on the sixteenth day of June, 1884, there was filed in said clerk's office a certificate of mailing notice in said entitled cause; which said certificate is in the words and figures following, to wit:

41 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the Circuit Court of the United States, Northern District of Illinois.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } Petition.

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that on the sixteenth day of June, A. D. 1884, I sent by mail a notice, a copy of which is hereto attached, marked Exhibit "A," to the following defendants and addressed as follows:

One copy to James N. Johnson, Northfield, Washington county, Vermont.

One copy to Eloisa Johnson, Northfield, Washington county, Vermont.

W. H. BRADLEY, *Clerk.* [SEAL.]

42 EXHIBIT "A."

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the United States Circuit Court.

The Village of Glencoe, John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, George G. Hall, all members of the council of said village of Glencoe; John L. Day, clerk of said village; Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson, Eloisa Johnson, Daniel J. Hubbard, Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon; Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and all whom it may concern:

Take notice that on the 31st day of March, A. D. 1884, a petition was filed by the undersigned in the United States circuit court for the northern district of Illinois to establish his title to the following-described lands, viz:

Blocks three (3), four (4), five (5), and lots three (3), four (4), five (5), six (6), eleven (11), twelve (12), all in block six (6), blocks eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), in Gormley's Addition to Glencoe, in Cook county and State of Illinois.

42½ Now, unless you appear at the October term of said court and show cause against such application said petition shall be taken for confessed and the title or interest of said petitioner will be decreed and established according to the prayer of such petition and you forever barred from disputing the same.

ALFRED CORNING CLARK, *Petitioner.*

McCOY, POPE, & McCOY,
Attorneys, 151 *Monroe Street.*

Endorsed: Filed June 16th, A. D. 1884. Wm. H. Bradley, clerk.

43 Afterwards, to wit, on the twenty-third day of June, in the adjourned May term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ALFRED CORNING CLARK
vs.
VILLAGE OF GLENCOE *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the demurrer of Michael and Eliza Gormley to the bill herein, and on motion of said Michael and Eliza Gormley, by their solicitor, leave is hereby given them to withdraw said demurrer and to answer herein within thirty days.

44 Afterwards, to wit, on the fifteenth day of September, 1884, came Michael Gormley and Eliza Gormley, by their solicitor, and filed in said clerk's office their answer in said entitled cause; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the U. S. Circuit Court. September Term, 1884.

CLARK
vs.
VILLAGE OF GLENCOE *et al.* } 18958. In Chancery.

The joint and several answer and pleas of Michael Gormley and Eliza Gormley, two of the defendants, to the bill of complaint of Alfred Corning Clark, the complainant herein.

These defendants, now and at all times hereafter, saving and reserving unto themselves and to each of them all benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained, for answer thereto or to so much thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto—they, these defendants, answering severally, say as follows:

These defendants deny that complainant is now or at any time hitherto has been the owner in fee, free and clear of all
45 other liens claims, and incumbrances of any nature or name, as averred in his said bill of complaint, of blocks 3, 4, 5, lots 3, 4, 5, 6, 11, and 12 of block 6 and blocks 8 to 24, inclusive, of "Gormley's Addition to Glencoe," but these defendants say they are informed and believe that complainant does hold the legal title thereto in trust for one of these defendants, the said Michael Gormley.

These defendants further say they have no knowledge, information, or belief as to the assertion of complainant that he derives title by descent from his father, Edward Clark, and that said Edward Clark died on or about the 14th day of October, 1882, and that said complainant was and is his sole heir-at-law, and that said

Edward Clark, in his lifetime, derived title in fee simple, absolute, to said blocks 4, 5, and 8 to 24, inclusive, by trustees' deed, dated September 10, 1878, from Adolph Loeb, and that said deed was duly acknowledged and recorded in said Cook county, and that said Edward Clark derived title to said block 3 and to said lots 3, 4, 5, 6, 11, and 12, in said block 6, from Sarah J. Condon, and that said Condon acquired title thereto from Adolph Loeb, as stated in said complainant's bill, and so demand proof thereof.

These defendants, further answering, admit that they made and executed a certain deed in the nature of a mortgage to one Adolph Loeb, purporting to convey to him the real estate men-
46 tioned in complainant's bill and bearing about the date mentioned in said bill; but whether said "Exhibit A" is a true copy thereof and whether the same was recorded in the recorder's office of Cook county, as alleged in said bill, these defendants have no information except as stated in said bill, and so demand proof thereof.

These defendants, further answering, deny that "Exhibit B" to complainant's bill is a true copy of the so-called plat of Gormley's Addition to Glencoe or that said Michael Gormley ever made or recorded any legal plat known as Gormley's Addition to Glencoe. This defendant, Michael Gormley, admits and the said Eliza Gormley believes it to be true that he caused to be filed for record in the recorder's office of Cook county, Illinois, a certain paper purporting to be a subdivision of the southwest quarter of section seven (7) and of the west half (W. $\frac{1}{2}$) of the northeast quarter (N. E. $\frac{1}{4}$) of the northwest quarter (N. W. $\frac{1}{4}$) of section eighteen (18), all in township 42 north, of range 13 east, of the 3rd P. M., Cook county, Illinois, and that the same was spread upon the records thereof, April 30th, 1874, in Book 7 of Plats, page 36, as document 155,226; but these defendants are informed and believe and so charge the fact to be that such pretended plat and the record thereof were not in compliance with the laws of Illinois, and that in fact there never was any dedication to public or private use of any street or streets, alley or alleys;
47 and these defendants also say that no part of said land pretended to be included in said plat was ever staked, nor any monument or corner located, nor any courses or distances indicated as required by law, nor any alleys, lots, blocks, or streets located in said pretended plat as required by law.

Further answering, these defendants admit that the said Michael Gormley acquired his title from one Marcus Gormley, who derived his title from the United States, but whether the dates of said deeds and of their records is correctly stated these defendants cannot state, and so require such proof thereof as this court may deem proper.

These defendants admit that the public records of Cook county, Illinois, pertaining to real estate conveyances were destroyed on the 8th and 9th days of October, 1871, as alleged in complainant's bill of complaint.

Further answering, these defendants say that it is true that the said Michael Gormley petitioned the council of the village of Glencoe, as he had a perfect right so to do, to vacate the said supposed

Adams street from Grove street to the supposed Bluff street; and they further say that the petition therefor was in writing, and the said Michael Gormley says and said Eliza Gormley believes it to be true that he made no representations at all to said council about the fact whether or not any such proposed vacation would en-
48 hance the value of his, said Michael Gormley's, property.

These defendants further say that an ordinance to vacate said part of said supposed Adams street was duly passed by the requisite majority of the members of said council; that such ordinance was published as required by law, and a true copy thereof recorded in the said recorder's office as required by law, and the said Michael Gormley thereupon became invested with the title to said portion of said supposed Adams street.

These defendants cannot say whether the dates concerning such ordinance as mentioned in said bill are correct or not, nor whether said "Exhibit C" is a true copy, and so require strict proof thereof.

Further answering, these defendants say that the strip of ground occupied by the said part of said supposed Adams street, together with other property adjacent, is now and for the last forty years has been used and occupied by the said Michael Gormley and his family continuously, and to the exclusion of all other persons as a homestead; that his house in which he now resides with his family and in which he has resided for the last forty years is situate on said supposed Adams street, and he has never in any way released or relinquished his homestead rights thereto, and he and his said wife, Eliza Gormley, claim the same, as it in fact is, as their homestead, as well as the lands adjacent and adjoining in said
49 portions of sections 7 and 18.

Further answering, these defendants say that the land occupied by said supposed Adams street was never and is not at present used as a public or even private highway; that the same has never been graded or turnpiked or set off or improved as a road nor ever been used by the public in any manner whatever, but has always, with other lands adjacent, been enclosed by a fence and fences for the last forty years, and for the last twenty-five years past has been enjoyed and controlled by said Michael Gormley and his family exclusively.

Further answering, these defendants say that if the passage of said ordinance vacating said supposed Adams street and the publishing and the recording of the same has in fact diminished the value of any of the real estate claimed to be owned by complainant, these defendants say that he has no remedy whatever against them or either of them, but if any remedy he has it is at law and against the said village of Glencoe, and that this court has no jurisdiction on the equity side thereof of the subject-matter.

Further answering, these defendants deny that the passage of said ordinance of vacation or of any of the other ordinances of vacation mentioned in said complainant's bill and the publishing
50 and recording thereof have in any way or manner clouded the title to the several lots and blocks claimed to be owned by complainant or to any of them.

Further answering, these defendants admit that said Michael Gormley, in the latter part of the year 1881 or the first part of 1882, presented to said council for passage an ordinance to vacate the supposed streets mentioned in "Exhibit D" to complainant's bill of complaint, but they distinctly deny that the said Michael Gormley made any false or fraudulent representations whatever to said council in relation thereto.

Further answering, these defendants say that the ordinance vacating said streets was regularly passed by the requisite majority of said council at a regular meeting thereof, and thereupon the title in fee to the land occupied by said supposed streets reverted *instanter* to the defendant, Michael Gormley, and these defendants insist that any attempts to annul or rescind the same at any special or regular meetings of said council thereafter, either of January 12th, 1882, or of January 24, 1882, or of February 7th, 1882, were wholly null and void, as was also the attempt of said council afterwards to re-establish said streets or supposed streets.

Further answering, these defendants say it may be true for aught they know that John L. Day never posted the said ordinances
51 of January 3rd, 1882, but they do say that said Michael Gormley posted true copies thereof, as required by the charter of said village of Glencoe, and had a true copy of said order of vacation recorded in the recorder's office of Cook county, as required by the statutes of Illinois in such case made and provided, and these defendants insist that such proceedings in nowise clouded or impaired the complainant's title, such as he has to the lands, or any part thereof, mentioned in complainant's bill of complaint.

These defendants, further answering, say that the suit mentioned in said complainant's bill of complaint in which this defendant, Michael Gormley, sought to secure a peremptory writ of mandamus in the superior court of Cook county can in nowise have any effect upon this case.

The defendant, Michael Gormley, admits, and the said Eliza believes it to be true, that this defendant, Michael Gormley, did begin and prosecute a suit for mandamus in the superior court of Cook county against John L. Day, and that the court rendered a judgment in favor of said Day, and that this defendant carried such suit by appeal to the appellate court of the first district of Illinois, and there the judgment of said superior court was confirmed; but whether such proceedings are correctly stated or not these defendants cannot state, and leave complainant to make such proof as this court shall deem necessary.

52 These defendants, further answering, say that so far as regards the assertion in complainant's bill that this defendant, Michael Gormley, intended to have the council of the village of Glencoe pass another ordinance similar to the one of January 3d, 1882, and of October 1, 1881, they know nothing in regard thereto; but this defendant, Michael Gormley, says he presumes this court will not curtail him of any of his rights as a citizen of the United States, and that if he shall see proper at any time to petition the

council of the village for anything for which it has cognizance he will do so.

And, further answering, these defendants deny that said Michael Gormley has fenced in said lots and blocks claimed to be owned by complainant and said streets and parts thereof, as alleged in complainant's bill of complaint; but they do say that the entire southwest quarter of section 7, township 42, range 13 east, of the third principal meridian has been used, occupied, and enjoyed since the issuance of a patent therefor by the United States, first, by Marcus Gormley as a residence and homestead, and then by the defendant, Michael Gormley, and that the entire 160 acres has [have] been enclosed by a fence or fences for the last forty years, except, first, the north 33 feet thereof, which is a part of an old country road known as South avenue, which has been *used*, graded and used by the public as a highway for over 30 years, and, second, excepting the east 33 feet of said 160 acres, which is a public street known as Grove street.

53

And these defendants, further answering as to the allegations of complainant that the ordinances of October 4, 1881, and of January 3d, 1882, were acts *ultra vires* of said council, and that said Day had no right to furnish copies thereof—these defendants — are legal propositions concerning which these defendants could only express the opinion of a layman and submit to the court the duty of answering the same; but these defendants are informed and believe that such acts were all legal and that said Michael Gormley became at once (even if he had parted with any title thereto by said pretended plat) — with the legal title and fee of all the lands included or intended to be included in said supposed streets, but they distinctly deny that such ordinances and the record of them are in any way a cloud upon the title to the several lots and blocks mentioned in complainant's bill.

And these defendants, further answering, say that the pretenses made in complainant's bill about the issues of the village election are merely electioneering bunkum and unworthy of reply; but these defendants distinctly deny that complainant is entitled to any order of injunction as prayed for in his bill of complaint.

And these defendants submit to this honorable court that all and every the matters in the complainant's bill mentioned and complained of are matters which may be determined and tried at law, and with respect to which the complainant is not entitled to any relief from a court of equity; and these defendants ask that they shall have the same benefit of this defense as if they had demurred to the complainant's bill.

54

And these defendants further say that said complainant ought not to maintain his bill in this court because he nowhere alleges that the value of the property or the amount in controversy is so much as five hundred dollars, and therefore this court has no jurisdiction of the subject-matter.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they or either of them are by the said bill charged, and they deny that the complainant is entitled

to the relief or any part thereof in the said bill of complaint demanded, and pray the same advantage of this answer as if they had further pleaded and had demurred to the said bill of complaint, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ELIZA GORMLEY,
By her solicitor, MORTON CULVER.
MICHAEL GORMLEY.

55 Michael Gormley, one of said defendants, says that he has read the foregoing answer and pleas by him signed, that he knows the contents thereof, and that the matters and things therein set forth are true of his own knowledge except those set forth on information and belief, and as to them he believes them to be true.

MICHAEL GORMLEY.

Subscribed and sworn to before me this 15th day of September, 1884.

[SEAL.] F. A. ROOT,
Notary Public, Cook Co., Ills.

(Endorsed:) Filed Sept. 15, 1884. Wm. H. Bradley, clerk.

56 On the same day, to wit, on the fifteenth day of September, 1884, came Morton Culver and Eugenia M. Culver, by their solicitor, and filed in said clerk's office their disclaimer in said entitled cause; which said disclaimer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the U. S. Circuit Court. In Chancery. June Term, 1884.

ALFRED CORNING CLARK
vs.
VILLAGE OF GLENCOE *et al.* } Bill.

The disclaimer of Morton Culver and Eugenia M. Culver, two of the defendants, to the bill of complaint of Alfred Corning Clark, the complainant.

These defendants, saving and reserving to themselves now and at all times hereafter all manner of advantage and benefit of exception and otherwise that can or may be had and taken to the many untruths, uncertainties, and imperfections in the complainant's bill of complaint contained, for answer thereunto or unto so much or such part thereof as is material for these defendants to make answer unto, *they* answer and say that they freely and absolutely disclaim all manner of interest in and to any and all the matters
57 and things in complainant's bill of complaint alleged, and these defendants deny all and all manner of unlawful combination and confederacy, unjustly charged against them in and by

the said bill of complaint, without this, that any other matter or thing in said bill contained material or necessary for these defendants to make answer unto and not herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true.

All which matters and things these defendants is [are] ready to aver, maintain, and — to be hence dismissed with their reasonable costs and charges in their behalf most wrongfully sustained.

By MORTON CULVER,
Their Solicitor.

Endorsed: Filed Sept. 15, 1884. Wm. H. Bradley, clerk.

58 Afterwards, to wit, on the nineteenth day of September, 1884, came Sarah J. Condon, by her solicitor, and filed in said clerk's office her appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois.

ALFRED C. CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } Petition.

I hereby enter the appearance of Sarah J. Condon, one of the defendants in the above-entitled cause.

WM. H. CONDON,
Sol'r for Sarah J. Condon.

(Endorsed:) Filed Sept. 19, 1884. Wm. H. Bradley, clerk.

59 Afterwards, to wit, on the twenty-second day of September, 1884, came G. D. Hall, by his solicitor, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } Bill.

And now comes G. D. Hall, one of the defendants in said cause, formerly mentioned in the bill of complaint in said suit as George G. Hamilton, then as George G. Hall, by N. T. Fitch, his solicitor, and enters his appearance in said cause.

G. D. HALL,
By N. T. FITCH,
Sol'r for said Defendant.

Chicago, Sept. 22nd, 1884.

(Endorsed:) Filed Sept. 22, 1884. Wm. H. Bradley, clerk.

60 Afterwards, to wit, on the twenty-fourth day of September, 1884, came the complainant, by his solicitors, and filed in said clerk's office his replication to the answer of Michael Gormley and Eliza Gormley in said entitled cause; which said replication is in the words and figures following, to wit:

61 STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of the United States, to the October Term, A. D. 1884.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

The replication of Alfred Corning Clark, complainant, to the joint & several answers of Michael Gormley and Eliza Gormley.

This repliant, saving and reserving to himself now and at all times hereafter all & all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants, for replication thereunto say- that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants, is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and
62 hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

McCOY, POPE & McCOY,
Solicitors for Complainant.

(Endorsed:) Filed this 24th day of Sept., A. D. 1884. Wm. H. Bradley, cl'k.

63 Afterwards, to wit, on the sixth day of October, 1884, there was filed in said clerk's office a certificate of publication in said entitled cause; which said certificate of publication is in the words and figures following, to wit:

I, Myra Bradwell, president of the Chicago Legal News Company, do hereby certify that a notice signed Alfred Corning Clark, petitioner, of which the annexed printed slip is a true copy, was published for four successive weeks, to wit, four times, in the Chicago Legal News, a weekly secular newspaper published every Saturday in the city of Chicago, county of Cook and State of Illinois, of general circulation throughout said county and State, and specially authorized by law to publish legal notices in said city and county,

and that the date of the first paper containing the same was the fourteenth day of June, A. D. 1884, and that the date of the last paper containing the same was the fifth day of July, A. D. 1884.

In witness whereof the president of said Chicago Legal News Company has hereunto affixed the seal of said company and subscribed his name, at the city of Chicago, this 5th day of July, A. D. 1884.

[SEAL.] MYRA BRADWELL, *President.*

And I further certify that said company has received nine
64 dollars for publishing the said notice.

MYRA BRADWELL.
R.

McCOY, POPE AND McCOY,
Attorneys, 151 *Monroe St.*

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the United States Circuit Court.

The Village of Glencoe, John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Elten, George G. Ligare, George G. Hall, all members of the council of said village of Glencoe; John L. Day, clerk of said village; Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson, Eloisa Johnson, Daniel J. Hubbard; Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon; Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and all whom it may concern:

Take notice that on the 31st day of March, A. D. 1884, a petition was filed by the undersigned in the United States circuit court for the northern district of Illinois to establish his title to the following-described lands, viz:

Blocks three (3), four (4), five (5), and lots three (3), four
65 (4), five (5), six (6), eleven (11), and twelve (12), all in block six (6); blocks eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), in Gormley's Addition to Glencoe, in Cook county and State of Illinois.

Now, unless you appear at the October term of said court and show cause against such application, said petition shall be taken for confessed and the title or interest of said petitioner will be decreed and established according to the prayer of such petition and you forever barred from disputing the same.

ALFRED CORNING CLARK, *Petitioner.*

McCOY, POPE & McCOY,
Solicitors for Petitioner.

(Endorsed:) Filed Oct. 6, 1884. Wm. H. Bradley, clerk.
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66 Afterwards, to wit, on the ninth day of October, 1884, there was filed in said clerk's office a certified copy of the order of June, 14, 1884, in said entitled cause; which said certified copy of order, together with the endorsements thereon, are in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois.

SATURDAY, *June 14th, A. D.* 1884.

Before Hon. Henry W. Blodgett, district judge.

ALFRED CORNING CLARK
v.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

And now comes the petitioner, Alfred Corning Clark, by McCoy, Pope and McCoy, his solicitors, and it appearing to the court from proofs herein filed that this suit is brought to enforce legal and equitable claims of said petitioner against real property situated within the northern district of Illinois, and that James N. Johnson and Eloisa Johnson, his wife, two of the defendants to said suit, are not inhabitants of nor found within the said district and do not voluntarily appear in said suit, the court, on motion of said McCoy, Pope and McCoy, hereby orders and directs that said James N.
67 Johnson and Eloisa Johnson, his wife, appear and plead, answer, or demur to the petition of said Alfred Corning Clark, filed herein, by the first Monday in October, 1884; and the court hereby orders and directs that the said defendants, James N. Johnson and Eloisa Johnson, be each served with a certified copy of this order within at least twenty days before said first Monday of October, 1884.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the 14th day of June, A. D. 1884, in the cause wherein Alfred Corning Clark is the complainant and The Village of Glencoe *et al.* are the defendants, as the same appears from the original records of said court now remaining in my custody and control.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 16th day of June, A. D. 1884.

WM. H. BRADLEY, *Clerk.*

68 UNITED STATES OF AMERICA, *District of Vermont,* } *ss:*

William W. Henry, United States marshal for the district of Vermont, being first duly sworn, doth depose and say that he served the within order of the United States circuit court for the northern

district of Illinois, entered June 14th, A. D. 1884, upon James N. Johnson and Eloisa Johnson, his wife, by delivering a duplicate certified copy of the same to each of them and informing each of the contents thereof this 24th day of June, A. D. 1884.

WM. W. HENRY,
U. S. Marshal.

Subscribed and sworn to before me this 25th day of June, A. D. 1884.

GEO. E. JOHNSON,
United States Commissioner, District of Vermont.

Fees:

50 miles travel, 6c.	3 00
2 services, 2.00	4 00
2 copies, 1.25	2 50
U. S. commissioner	50
	$10 00

(Endorsed:) Filed Oct. 9, 1884. Wm. H. Bradley, clerk.

69 On the same day, to wit, on the ninth day of October, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

It appearing to the court from proofs herein filed that due publication of notice to the defendants in this case and all whom it may concern has been made and copies thereof sent by the clerk of this court, all as by order of this court of June fourteenth, 1884, directed and as required and provided by section 17, chapter 116, Revised Statutes of the State of Illinois, and that due personal service of process issued from this court in this cause has been had on the defendants, The Village of Glencoe; John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, all members of the counsel [council] of said village of Glencoe; John L. Day, clerk of said village, March 31, 1884; Daniel J. Hubbard, April 14, 1884; Adolph Loeb, trustee, April 15, 1884; James Bolton, successor in trust, April 17, 1884; Lyman Baird, trustee, April 15, 1884; William H. Bradley and Lewis H. Boutell, successors in trust, April 8, 1884; and it also appearing to this court
70 from proofs herein filed that the defendants, James N. Johnson and Eloisa Johnson, his wife, two of the defendants herein, have been duly served, June 24, 1884, each with a duly certified

copy of the order of this court of June 14, 1884, directing them to appear and plead, answer, or demur to the petition of Alfred Corning Clark, petitioner herein, by the first Monday of October, 1884, and none of said defendants, The Village of Glencoe; John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, all members of the counsel [council] of said village of Glencoe; John L. Day, clerk of said village; Daniel J. Hubbard; Adolph Loeb, trustee; James Bolton, successor in trust; Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and all whom it may concern, not having plead, answered, or demurred to the petition of said Clark filed herein, and all defendants herein mentioned being in default herein, and said defendants, James N. Johnson, Eloisa Johnson, Daniel J. Hubbard; Adolph Loeb, trustee; James Bolton, successor in trust; Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and all whom it may concern, having entered no appearance herein, and each and all of said defendants herein mentioned and all whom it may concern having been now three times solemnly called in open court come not, but herein make de-
71 fault, the respective defaults of each and all of said defendants hereinbefore mentioned and all whom it may concern are hereby ordered to be and are entered herein and the petition herein filed of said Alfred Corning Clark taken as to them as confessed; and Sarah J. Condon and G. D. Hall, by their respective duly authorized solicitors, having this day filed in this court their several consents in writing to a reference of this cause to Henry W. Bishop, one of the masters in chancery of this court, to take proofs herein and report the same, with his conclusions thereon, to this court, on motion of said Clark, due notice thereof having been given, this cause is so referred to said Bishop, and he is directed to take such testimony and report such conclusions thereon with all convenient speed.

72 Afterwards, to wit, on the fifth day of January, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ALFRED CORNING CLARK
vs.
VILLAGE OF GLENCOE *et al.*
} In Chancery.

On motion of complainant, by his solicitors, it is ordered that this cause be re-referred, and this re-reference is hereby made to John I. Bennett, master in chancery, to take proof herein and report the same, with his findings thereon, to the court; and it is further ordered that the time for taking proof herein be extended forty-five days.

73 Afterwards, to wit, on the twenty-eighth day of February, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ALFRED C. CLARK
vs.
THE VILLAGE OF GLENCOE *et al.* } In Chancery.

On motion of complainant's solicitors it is ordered that complainant have to and including February twenty-eighth, 1885, to complete the taking of testimony in support of the bill, and that the defendants who have appeared and filed answers or disclaimers have to and including August first, 1885, to take testimony in support of such answers or disclaimers. It is also ordered that, after the taking of such evidence by defendants, complainant have thirty days to take any testimony in rebuttal that he may desire.

74 Afterwards, to wit, on the twenty-eighth day of October, in the adjourned October term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ALFRED CORNING CLARK
vs.
VILLAGE OF GLENCOE *et al.* } In Chancery.

On motion of Morton Culver, Esq., it is ordered that the time be extended five days to each party to take testimony herein.

Afterwards, to wit, on the second day of November, in the adjourned October term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ALFRED C. CLARK
vs.
VILLAGE OF GLENCOE *et al.* } In Chancery.

Now come the parties, by their solicitors, and the defendants' solicitor, upon affidavit filed, moves the court for a rule upon Charles E. Pope, solicitor, to produce the abstracts of title named in said affidavit for examination, and after hearing the arguments of counsel the court overrules said motion.

75 Afterwards, to wit, on the ninth day of December, in the adjourned October term of said court, 1885, in the record of the

proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE; JOHN NUTT, JAMES S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, Granville D. Hall, All Members of the Council of said Village of Glencoe; John L. Day, Clerk of said Village; Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson and Eloisa Johnson, Daniel J. Hubbard; Adolph Loeb, Trustee; James Bolton, Successor in Trust; Sarah J. Condon; Lyman Baird, Trustee; William H. Bradley and Lewis H. Boutell, Successors in Trust, and "All Whom it May Concern." } In Chancery.

And now, upon this day, comes Alfred Corning Clark, petitioner herein, by McCoy, Pope & McCoy, his solicitors, and asks leave to amend his petition and the proceedings herein by changing the name of the defendant mentioned in the said petition and proceedings as George D. Hall, also formerly mentioned therein
76 as George G. Hamilton, wherever mentioned in said petition and proceedings to the name of Granville D. Hall; and said petitioner further asks leave to amend his said petition by changing the averment whenever the same occurs, to wit, that the defendants, James N. Johnson and Eloisa Johnson, his wife, are at the date of the filing of this bill each citizens of the State of Illinois, to the averment that they are each at the date of the filing of this bill citizens of the State of Vermont; and thereupon the court grants leave to said petitioner to make said amendments, which are accordingly made; and it now appearing to the court from proofs herein filed that the said defendant, Granville D. Hall, a member of the council of the village of Glencoe, on the 22nd day of September, A. D. 1884, duly entered his appearance herein, by N. T. Fitch, Esq're, his duly authorized solicitor herein; and it further appearing to the court from such proofs that Sarah J. Condon, one of the defendants herein, did, on the 19th day of September, A. D. 1884, duly enter her appearance herein, by William H. Condon, Esq're, her duly authorized solicitor herein; and it further appearing to the court that neither the said Granville D. Hall, a member of the council of the village of Glencoe, nor the said Sarah J. Condon have plead, answered, or demurred to said petition, and both said Gran-
77 ville D. Hall and said Sarah J. Condon being in default, and being now each three times solemnly called in open court come not, but herein make default, the respective defaults of said Granville D. Hall, a member of the council of the village of Glencoe, and said Sarah J. Condon are hereby ordered to be and are en-

tered herein; and the said petition of said Alfred Corning Clark is as to each of them taken as confessed; and this cause coming on now for final hearing at this term, and having been argued by counsel, thereupon, upon consideration thereof and from proofs and evidence herein adduced, the court finds that the material allegations in said petition are true, and that the equities of this cause are with the petitioner.

The court more particularly finds that the petitioner, Alfred Corning Clark, was, at the date of filing the petition herein, and now is the sole and only owner in fee simple absolute of the premises described in said petition, to wit: Blocks number- three (3), four (4), five (5); lots number- three (3), four (4), five (5), six (6), eleven (11), and twelve (12), all in block six (6); also blocks eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), all in Gormley's Addition to Glencoe, in Cook county
78 and State of Illinois, with the buildings, tenements, rights, privileges, hereditaments, easements, and appurtenances thereto appertaining and belonging, free and clear from all liens, claims, and encumbrances whatsoever, and that the defendants, Michael and Eliza Gormley, are now and were at the date of filing this petition in possession of said lots and blocks, and the value of said premises in controversy exceeds the sum of $5,000.00.

That said petitioner, Alfred Corning Clark, derived and held title and now derives and holds title to said lots and blocks herein mentioned as aforesaid under and by virtue of an unbroken and complete chain of conveyances, duly made, executed, acknowledged, and delivered, from the United States of America to him, the said petitioner, and a plat entitled Gormley's Addition to Glencoe, showing lots and blocks, with other property, both conveyances and plat recorded in the recorder's office of Cook county, Illinois, and by descent from his father, one Edward Clark, now deceased, and as the sole heir-at-law of said Edward Clark, deceased.

That the public records of Cook county, Illinois, showing the title of said petitioner to said lots and blocks hereinbefore mentioned, were utterly destroyed by fire on the 8th and 9th days of October, 1871.

79 The court further finds from said proofs and evidence that at the date of the filing of this petition on that portion of Adams avenue shown on said plat as between Bluff street and Grove street there was and is now located and situated the dwelling-house, barn, and shop belong to said Michael Gormley.

The court further finds from such proof and evidence that the ordinance of January 3rd, 1882, mentioned in said petition, whereby it was sought to vacate certain streets in said Gormley's Addition to Glencoe, was passed by said council of said village of Glencoe and a copy of the same recorded in the recorder's office of Cook county, Illinois, but that said ordinance of January 3rd, 1882, was never posted or published, as required by the ordinances and charter of the said village; but said ordinance of January 3rd, 1882, was by said

council, by resolutions on January 12th and 24th, 1882, and by ordinance on February 7th, 1882, duly repealed, rescinded, and annulled.

The court further, from such proofs and evidence, finds that said council of said village of Glencoe, on October 4th, 1881, passed an ordinance to vacate so much of said Adams avenue as is located between Grove street and Bluff street, shown on said plat of Gormley's Addition to Glencoe; which said ordinance was duly posted, as
80 required by the charter and ordinances of said village of Glencoe.

The court therefore doth order, adjudge, and decree that the title to the following property, to wit, blocks number- three (3), four (4), five (5), lots number- three (3), four (4), five (5), six (6), eleven (11), and twelve (12), all in block six (6), blocks eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), in Gormley's Addition to Glencoe, in Cook county and State
81 of Illinois, was at the date of filing said petition herein and now is vested in the petitioner, Alfred Corning Clark, in fee simple absolute, together with all the rights, privileges, easements, tenements, hereditaments, and appurtenances thereunto appertaining and belonging, and the said fee-simple title in and to said last-mentioned lots and blocks, so decreed in said petitioner, is hereby established and confirmed in him, the said Alfred Corning Clark, together with all the rights, privileges, easements, tenements, hereditaments, and appurtenances thereunto appertaining and belonging, free and clear from all claims, liens, and encumbrances, of whatsoever name and nature.

The court doth further order, adjudge, and decree that at the date of filing said petition the said Michael Gormley was and is now estopped, as against said petitioner, Alfred Corning Clark, his legal representatives, heirs, and assigns of said lots and blocks or any part thereof, the title of which is decreed in him, the said petitioner, from alleging or claiming any informality or defect in the plat of said Gormley's Addition to Glencoe aforesaid, and that said Michael and Eliza Gormley have no homestead rights in any of said lots & blocks is herein decreed in said Alfred Corning Clark, or in any street or streets or parts thereof upon which any of the said
82 lots & blocks abut, as against said Alfred Corning Clark, his legal representatives, heirs, and assigns of said lots & blocks or any part thereof.

The court further orders, adjudges, and decrees that said ordinance of January 3rd, 1882, was never legally posted as required by the charter and ordinance of said village of Glencoe, and was duly and regularly annulled and rescinded, and the said ordinance of January 3rd, 1882, was at the date of filing this petition and now is, together with the copy thereof filed in said recorder's office of Cook county, Illinois, null and void and of no effect whatever.

The court doth further order, adjudge, and decree that at the date of filing this petition the title was and is now to so much of

Adams avenue as is shown on the plat of said Gormley's Addition to Glencoe between Grove street and Bluff street vested in fee simple in the said Michael Gormley, subject to the easement in and the right of use of as a street by said petitioner, Alfred Corning Clark, his heirs, legal representatives, and assigns, as the owner of lots or parts thereof abutting on said portion of said Adams avenue between Grove street and Bluff street, and the court doth order, adjudge, and decree that said Michael Gormley and Eliza Gormley remove from said portion of said Adams avenue between Grove street and Bluff street said dwelling-house, barn, and shop, now on said last-named portion of Adams avenue, on or before the first day of May, 1886, and that in default of such removal so hereby ordered, upon proof by affidavit of a demand by said petitioner for such removal upon said Michael and Eliza Gormley, and service of a certified copy of this decree by exhibiting and reading the same to them, and a refusal by said Michael and Eliza Gormley, or either of them, to obey such order of removal, the marshal of this district be, and he is hereby, instructed to so remove said dwelling-house, barn, and shop from said portion of Adams avenue, as hereby ordered and directed.

83

The court doth further order, adjudge, and decree that the petitioner, Alfred Corning Clark, has the right to immediate possession of the said lots and blooks, the title of which is hereby decreed to be in him, the said Alfred Corning Clark, and the said Michael Gormley and Eliza Gormley are hereby ordered, decreed, and directed to surrender up possession to said Alfred Corning Clark of the said lots and blocks, the title of which is hereby decreed in said Alfred Corning Clark; and the court doth further order, adjudge, and decree that unless such delivery of said lots and blocks be so made, upon proof by affidavit of a demand made by petitioner upon said Michael Gormley and Eliza Gormley for such possession of said lots and blocks, and service of a certified copy of this decree upon said Michael and Eliza Gromley by exhibiting and reading the same to them, and a refusal by them, or either of them, to obey such decree or order for possession of said lots and blocks, that a writ of assistance, directed to the marshal of this district, forthwith issue to place said Alfred Corning Clark in possession of said lots and blocks hereby decreed in him.

84

The court doth, upon the disclaimer of said Morton Culver and Eugenia M. Culver of any interest in the property and right in controversy, order said Morton and Eugenia M. Culver dismissed; and it is further ordered that said injunction heretofore issued herein by the district judge acting as circuit judge be, and the same is hereby, dissolved, and the said Michael Gormley & Eliza, his wife, now appear & pray to be allowed to file suggestion of and prove damages upon the dissolution of said injunction, which is denied by the court, and thereupon said Michael Gormley and Eliza Gormley pray an appeal to the Supreme Court of the United States, which is allowed upon their, or either of them, filing a bond according to law; and thereupon said Michael Gormley and Eliza

85

Gormley ask that the court fix the amount of a bond which is to act as a supersedeas, and thereupon the court fixes the amount at $1,600.

The court doth further order, adjudge, & decree that said Michael Gormley pay the costs of this suit, to be taxed by the clerk of the court, and that in default of such payment execution issue therefor in accordance with the usual practice of this court.

86 Afterwards, to wit, on the ninth day of February, 1886 in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following, to wit:

Order.

ALFRED CORNING CLARK
vs.
VILLAGE OF GLENCOE *et al.* } In Chancery.

Now come the parties, by their solicitors, and, on motion of Morton Culver, Esq., the time for defendants to file their appeal bond herein is hereby extended to Monday morning next at ten o'clock.

87 Afterwards, to wit, on the twelfth day of February, 1886, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Michael Gormley, as principal, and Daniel H. Elliott, James H. Gormley, and Charles W. Bullard, as sureties, are held and firmly bound unto Alfred Corning Clark, complainant, in the penal sum of sixteen hundred dollars ($1,600.00), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this eighth day of February, A. D. 1886.

The condition of the above obligation is such that whereas the said complainant, Alfred Corning Clark, did, on the ninth day of December, A. D. 1885, in the United States circuit court for the northern district of Illinois, and of the October term thereof, A. D. 1885, in a certain suit in chancery entitled Clark *vs.* The Village of Glencoe *et al.*, Gen. No. 18958, recover against the above-bounden Michael Gormley and others a decree of court in favor of said Clark, and also judgment for costs therein; from which said decree
88 and judgment of the said circuit court the said Michael Gormley has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Michael Gormley shall prosecute his said appeal to effect and if he fail to make good his plea shall an-

swer all damages and costs, then the above obligation to be void; otherwise to remain in full force and virtue.

MICHAEL GORMLEY. [SEAL.]
JAS. H. GORMLEY. [SEAL.]
CHARLES W. BULLARD. [SEAL.]
DANIEL H. ELLIOTT. [SEAL.]

Approved:
W. Q. GRESHAM.

Endorsed: Filed Feb'y 12th, 1886. Wm. H. Bradley, clerk.

89 *Testimony.*

Deposition of A. C. Clark.

Circuit Court of the United States, Northern District of Illinois.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE *et al.*

STATE OF NEW YORK, *City and County of New York,* } *ss:*

Deposition of Alfred Corning Clark, taken before Frederick N. Phinney, a commissioner, at the city of New York and State of New York, on the twenty-third day of February, A. D. 1885.

Interrogatory first. State your name, age, occupation, and place of residence, and of what State you are a citizen.

First. To the first interrogatory he saith: My name is Alfred Corning Clark; my age is forty years; I have no occupation other than the management of my own affairs and those of my family; my place of residence is Cooperstown, in the State of New
90 York; I am a citizen of the State of New York.

Interrogatory second. State whether you know the parties to this suit or either of them; and, if so, how long have you known them, or either of them, respectively.

Second. To the second interrogatory he saith: I am the complainant in this suit; I do not know any or either of the other parties.

Interrogatory third. Did you know Edward Clark, late of Cooperstown, county of Otsego, State of New York?

Third. To the third interrogatory he saith: Yea.

Interrogatory fourth. If you answer yea to said third interrogatory, state whether he is living or deceased.

Fourth. To the fourth interrogatory he saith: He is deceased.

Interrogatory fifth. If you answer he is deceased, state when and where he died and how you know of his death.

Fifth. To the fifth interrogatory he saith: He died on the fourteenth day of October, in the year one thousand eight hundred and eighty-two, at Cooperstown, in the State of New York. I know of his death because I was with him when he died.

Interrogatory sixth. If you answer he is deceased, state whether or not he was ever married. If so, to whom, and whether the person or persons to whom he was married are living or deceased, and if deceased when she or they died.

91 Sixth. To the sixth interrogatory he saith: He was married once, only to Caroline Jordan; she is deceased; she died on the 27th day of June, in the year one thousand eight hundred and seventy-four.

Interrogatory seventh. If you answer said Edward Clark was married, state whether or not he ever had any children. If you answer yea, state the name or names of all of said children and the name or names of the mother or mothers of such child or children.

Seventh. To the seventh interrogatory he saith: He had four children; their names were Ambrose Jordan Clark, Edward Loraine Clark, Julia Elise Clark, and Alfred Corning Clark; the name of their mother was, before her marriage, Caroline Jordan.

Interrogatory eighth. If you answer said Edward Clark had any child or children, state whether child or children are now living, and if any are deceased state when such child or children died.

Eighth. To the eighth interrogatory he saith: I, Alfred Corning Clark, am the only child of the above-named Edward Clark now living; the other children died before their father's death. Julia Elise died on the twenty-first day of August, 1841; Edward Loraine died on the nineteenth day of February, in the year one thousand eight hundred and sixty, and Ambrose Jordan died on the twentieth day of May, in the year one thousand eight hundred and eighty.

92 Interrogatory ninth. If you answer that Edward Clark did have any child or children, state whether such children were ever married, and, if you answer yea, state to whom and names of such children who married.

Ninth. To the ninth interrogatory he saith: None of the children of the above-named Edward Clark were married except myself. I, Alfred Corning Clark, married Elizabeth Scriven.

Interrogatory tenth. If you answer any of said children of Edward Clark did marry, state whether or not there were any grandchildren born of said Edward Clark. If you answer yea, give their names and the names of their parents.

Tenth. To the tenth interrogatory he saith: There have been four; their names are Edward Scriven, Robert Sterling, Frederick Ambrose, and Stephen Carlton; their parents are myself, Alfred Corning Clark, and my wife, Elizabeth Scriven Clark, above named.

Interrogatory eleventh. State whether or not you were related to the said Edward Clark, and, if you answer yea, state in what way you were related.

Eleventh. To the eleventh interrogatory he saith: I am the son of the Edward Clark referred to in this interrogatory.

ALFRED CORNING CLARK.

Subscribed and sworn to before me this 23d day of February, 1885.

FREDERICK N. PHINNEY,
Commissioner.

McCOY, POPE & McCOY,
Complainant's Solicitors.

93 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

The United States of America to Frederick N. Phinney, Esquire, as commissioner of the city of New York, in the county of New York and State of New York, or other officer mentioned in the annexed notice, Greeting:

We, reposing special confidence in your fidelity and provident circumspection, do hereby authorize and appoint you to take the testimony in writing of Alfred Corning Clark, whom you are hereby authorized and required to bring before you at such time and place as you may designate and appoint for that purpose, and that at such time and place you will proceed to examine, under oath, said witness, upon the interrogatories hereunto annexed, at the instance of the complainant in a certain cause now pending and undetermined in our circuit court of the United States for the northern district of Illinois, before the judges thereof, wherein Alfred Corning Clark is plaintiff and The Village of Glencoe *et al.* are defendants. The answers to the annexed interrogatories you will cause to be reduced to writing in the order in which they shall be proposed and answered, and they shall then be signed by said witness. At the foot thereof you will add a certificate, subscribed by yourself, stating that the same were sworn to and subscribed by said witness, and the time and place when and where the same were taken, which said
94 examination of said witness so taken, with your certificate thereto attached, you will send, directed to our clerk of our circuit court of the United States for the northern district of Illinois, sealed, with the names of the parties litigant endorsed thereupon, together with this writ, with due dispatch.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at
[SEAL.] Chicago, Illinois, this 23d day of January, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th year.

WM. H. BRADLEY, *Clerk.*

(Endorsed:) Filed Feb'y 26, A. D. 1885. Opened Feb'y 26, A. D. 1885. For Mr. Pope, compl't's att'y. Wm. H. Bradley, clerk.

95 In the Circuit Court of the United States for the Northern District of Illinois.

ALFRED CORNING CLARKE
vs.
VILLAGE OF GLENCOE *et al.* } Bill.

To the Honorable Walter Q. Gresham, judge of said court:

In pursuance of the order of reference entered in this cause January 5, 1885, I appointed January 10, 1885, for the taking of evidence therein, and was on that day and on divers other days subsequently attended by Charles E. Pope, representing the firm of McCoy, Pope and McCoy, solicitors for the complainant, and by Norton Culver, solicitor for the defendants, Michael and Eliza Gormley; and at those several times divers witnesses on behalf of both the complainant and the defendants were also before me and testified.

The said several witnesses so attending were by me severally sworn, and their evidence was under my direction and control taken down as given by the several witnesses and is annexed to this report, commencing at page 185 and ending at page 337 (the annexed evidence prior to said page 185 having been introduced before me as having been and purporting to have been taken before Henry W. Bishop, one of the masters of this court, on a former reference), and at the times therein shown.

I set down the cause for final hearing for the 27th day of October, 1885, and was then attended by counsel for the said respective parties; whereupon it was claimed on the part of the defendants, Michael and Eliza Gormley, that the direction in the order, of reference to report findings was an error in the draft of the order, and that the defendants had further documentary evidence which

96 they desired to introduce and could introduce at the trial; and the court in regular call of the docket having reached the cause for trial, with the consent of counsel I respectfully report the evidence taken and introduced before me, without findings.

Respectfully submitted,

JOHN I. BENNETT,
Master in Chancery of the United States Court for the Northern District of Illinois.

Chicago, October 27, 1885.

(See further return, page 343.—J. I. Bennett, master, &c.)

97 In the Circuit Court of the United States for the Northern District of Illinois.

ALFRED C. CLARKE, Complainant,
vs.
VILLAGE OF GLENCOE *et al.*, Defendants. } In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, October 20th, A. D. 1884.

Present: Mr. Pope, for complainant; Mr. Morton Culver, for M. & E. Gormley.

MORTON CULVER, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. POPE and deposes and says as follows:

Counsel for complainant offered in evidence the following:

Certified copy of pleadings and judgments in the case of Gormley *vs.* Day, in the superior court of Cook county, Illinois.

Objected to as irrelevant, not properly attested, and not a complete record.

Certified copies of the last will and testament of Edward Clark, late of Cooperstown, deceased; probate of the same and letters testamentary issued on said will in the surrogate court of the county of Otsego, State of New York.

Objected to as not properly attested and as irrelevant.

98 Certified copy of the order of affirmance in the case of Gormley *vs.* Day, the order being entered in the appellate court of the first district of Illinois.

Objected to as irrelevant and not properly attested.

A. Morton Culver; lawful age; occupation, lawyer; residence, Glencoe.

Q. Please look at the document which I hand you, being a copy of the plat of Gormley's Addition to Glencoe attached to the record certified by the clerk of the superior court of Cook county, Illinois, with the appellate court of the 1st district of Illinois, in the case of Gormley *vs.* Day, filed in the appellate court on March 8, 1882, and state in whose handwriting the endorsements are upon the copy of the plat which I show you.

A. Mine.

Q. When were those endorsements added—before or after the certification of the clerk?

A. I don't remember; I don't remember that I wrote this at all, but it is in my handwriting.

Q. That handwriting and the endorsement are shown, are they not, on the copy of the plat of Gormley's Addition to Glencoe certified up in the transcript in the case of Gormley *vs.* Day to the clerk of the appellate court by the clerk of the superior court?

Objected to because that is not the way to prove it.

A. I don't know whether they were or not.

Q. Please look at the document which I hand you and state if that is not the transcript in the case of Gormley *vs.* Day which you filed or had filed in the appellate court for the 1st district of Illinois.

A. I can't tell whether it is or not; it looks like it. It ap-
99 pears to be a transcript filed in the appellate court.

Q. To the best of your knowledge and belief, is it not the transcript which you filed in the appellate court?

A. I could not tell; I never read the transcript. I have no doubt it is; it appears to be.

Q. Will you explain how it was that these endorsements upon the copy of the plat attached to the transcript in the case of Gormley *vs.* Day were placed there when said endorsements do not appear upon the original pleadings in the case of Gormley *vs.* Day?

A. I don't remember anything about it. I could not on oath swear I ever wrote anything on this plat except I see it. I have no recollection when or where.

Q. It is a fact that it is in your handwriting?

A. Yes, sir. I mean the plat which appears in the transcript which purports to have been filed in the appellate court March 8th.

Q. Will you please state from whom you procured the deed from Marcus Gormley to Michael Gormley, which you offered in evidence in the superior court in the case of Gormley *vs.* Day?

A. I don't remember. I don't remember that I offered it in evidence.

Q. Is it not a fact said deed was at the time of the trial of Gormley *vs.* Day in the possession of said Michael Gormley or in your possession?

A. I don't remember that. I don't remember anything about it.

Q. When did you last see said deed?

A. I don't remember I ever saw it. I should presume all papers pertaining to Mr. Gormley's property were in his own possession. I never had them in my possession that I know of.

Q. From whom did you procure the original plat of Gormley's Addition which you offered in evidence in Gormley *vs.* Day?

100 A. I don't remember that I offered it. The last time I saw it Mr. Gormley had it; last week.

Q. Michael Gormley?

A. Yes, sir.

Q. From whom did you procure the patent which you offered in evidence in Gormley *vs.* Day, in the superior court?

A. I don't remember.

Q. Where did you last see the patent?

A. I don't remember I ever saw it.

Q. Is it not a fact you offered the original patent in evidence in said cause?

A. I don't remember that I did or did not.

Q. What is your best recollection?

A. I haven't the slightest recollection about the thing.

Q. If you did offer it in evidence, from whom did you procure it?

A. I have no recollection at all about it; I want to tell this—I

may appear to swear curiously, but it is a fact my memory is not good.

Q. Please examine the transcript of the record of Gormley *vs.* Day and state whether the record is the proceedings in the case of Gormley *vs.* Day, in the superior court of Cook county, and refreshes your recollection as to what documents you there offered in evidence, hereinbefore referred to.

A. The first one, it seems, was a notice dated January 10, 1882; so this record says. It seems by this record I offered the deeds to Michael Gormley in evidence marked B and C; that appears the [to] be the date, the 4th of May, so page 49 of the record says, from Marcus Gormley and Mary Gormley, his wife, to Michael Gormley, for the southwest quarter, section 7, town. 42 north, range 13, containing 160 acres.

101 Also page 51 of the record shows a deed made December 15, 1864, between Alexander McDaniel and wife and Michael Gormley, of the west half of the north half of lot 1 of the northwest quarter, section 18, 42, 13. I do not notice any patent here. There appears on page 66 the original plat was offered in evidence; also the record shows I offered the plat in evidence, on page 47.

Mr. POPE: I offer in evidence so much of the record and transcript in the case of Gormley *vs* Day, filed in the appellate court of the first district of Illinois March 8, 1882, and referred to by the witness, as shows the endorsements upon the plat of Gormley's Addition to the village of Glencoe; which endorsements are as follows:

"Endorsements on plat of Gormley's Addition to Glencoe, Gormley's Addition to Glencoe being a sub'd'n of the S. W. ¼ of sec. 7 and the W. ½ of N. E. ¼ of N. W. ¼ of sec. 18, being all in T. 42, R. 13 E."

"STATE OF ILLINOIS, } ss:
Cook County, }

No. 155,226.

Filed for record Mar. 11, A. D. 1884, at — o'clock, and recorded Ap'l 30th, 1874, in Book 7 of Plats, page 36.

JAS. STEWART, *Recorder.*"

"STATE OF ILLINOIS, } ss:
County of Cook, }

Be it remembered that on this sixth day of March, A. D. 1874, personally appeared Michael Gormley before me, Charles Haines, a justice of the peace in and for the town of South Chicago, in the county and State aforesaid, who is personally known to me,

102 and acknowledged that he is proprietor of the foregoing described real estate, designated as 'Gormley's Addition to Glencoe,' and that the foregoing subdivision is made of his own free will and deed. Given under my hand and seal this 6th day March, A. D. 1874.

J. CHARLES HAINES, *J. P.* [SEAL.]"

"STATE OF ILLINOIS, } ss:
County of Cook, }

I, Alexander Walcott, do hereby certify that I have surveyed and subdivided the S. W. ¼ of sec. 7 and the W. ½ of the N. E. ¼ of the N. W. ¼ of sec. 18, being all in town. 42 north, range 13 E., of 3rd P. M., and that the annexed plat is a correct representation of said subdivision.

Chicago, March 5, 1874.

ALEX. WALCOTT,
County Surveyor."

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Joseph E. Gary, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court.

At a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the second day, of January, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the hundred and sixth.

103 Present: The Honorable Joseph E. Gary, judge of the superior court of Cook county; Luther Laflin Mills, State's attorney; Orin L. Mann, sheriff of Cook county.

Attest: JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the 17th day of January, in the year of our Lord one thousand eight hundred and eighty-two, there was filed in the office of the clerk of the superior court of Cook county a certain petition for mandamus, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

To the Honorable Joseph E. Gary, one of the judges of said court:

Your petitioner, Michael Gormley, respectfully shows unto your honor that he is now and for more than ten years last past has been a resident and tax-payer of the village of Glencoe, in the town of New Trier, Cook county, Illinois.

2. That the village of Glencoe was duly incorporated by an act of the General Assembly of the State of Illinois entitled "An act to incorporate the village of Glencoe," approved March 29th, 1869, a copy of which said act is hereto attached and marked "Exhibit A" and made part of this petition, and reference being here had thereto for greater certainty and particularity.

3. That ever since the first Tuesday in April, 1881, the council of said village has consisted of five members or councilmen and one president, and that the clerk of said council and village has been one John L. Day, who is made defendant herein.

104 4. That among the duties of such clerk he is to post three copies of each and every ordinance posted [passed] by said council within thirty days of the passage of such ordinance or ordinances, and also to keep the records of the acts and doings of such council, and upon request and the tender of his fees therefor to make and deliver to any person interested a certified copy over his hand and the corporate seal of such village of any and all the records of such village in his possession.

5. That your petitioner being the owner in fee of the following-described premises, located in said village of Glencoe, to wit:

The southwest quarter of section seven, and also the west half of the northeast quarter of the northwest quarter of section 18, all in township 42 north of range 13 east of the third principal meridian, consisting of 180 acres—caused the same to be subdivided into lots, blocks, streets, and alleys, and a plat of such subdivision, entitled "Gormley's Addision to Glencoe," to be recorded in the recorder's office of said Cook county March 11th, 1874, in Book 7 of plats, page 36, reference being here had thereto or to the original plat (ready to be produced in court) for greater certainty and particularity, a map containing a copy of such plat being hereto attached and marked "Exhibit B" and made part of this petition.

6. That petitioner has not sold or conveyed the land in said streets and alleys, or any part thereof, or in any manner incumbered the same since the recording of said plat, except by the act of making such subdivision and recording the plat thereof.

7. That said council of the village of Glencoe, at one of its regular stated monthly meetings, to wit, on the third day of January, 1882, at which meeting there were present four councilmen and its president, unanimously passed a certain ordinance, a copy of

105 which is hereto annexed and marked "Exhibit C," and such ordinance was passed on calling the ayes and noes of said four councilmen, all of whom voted aye, and was so recorded in the record of the acts and doings of said council by its said clerk, John L. Day, aforesaid.

8. That said John L. Day, as such clerk, is the keeper and custodian, among other things, of the seal of said village; also of its book of ordinances and of the records of the acts and doings of said council.

9. That said Day, conspiring with other persons how to injure your petitioner, has hitherto refused and still does refuse to post copies of said ordinance at the places and within the time required by the charter of said village, and says he will not post said ordinance at all so as to give it force and effect, but pretends that said ordinance has been repealed; but your petitioner avers that said ordinance has not been repealed or any part thereof, and petitioner says he fears and verily believes that said Day will not post said ordinance as required of him by law, and, further, that he will

not post said ordinance at all; and petitioner further says that since the passage of said ordinance he has applied to said Day for a duly certified copy of said ordinance over his hand as such clerk and the seal of said village, and has tendered to said Day his legal fees for such certified copy, and the said Day utterly refuses to furnish your petitioner with such a certified copy.

10. That because of the refusal of said Day to furnish your petitioner with a certified copy as aforesaid your petitioner is unable to file in the recorder's office of said Cook county for record an authenticated copy of said ordinance, as is by law required in such cases made and provided, by means whereof your petitioner is prevented from legally asserting title to the lands in said streets
106 so vacated, to his great damage, to wit, the sum of ten thousand dollars; and petitioner further shows unto the court that said Day is impecunious and cannot respond to any damages at law which petitioner might recover against him for refusing to perform his duties as such clerk, and petitioner further shows unto the court that said Day has never given to said village any bond for the faithful performance of his duties as such clerk.

Wherefore petitioner prays leave to file this his petition; that said Day be made party defendant; that a summons of mandamus issue, returnable at a short day to be fixed by this court, and that upon a hearing your honor will command the said John L. Day, clerk as aforesaid, under the pains and penalties of the law, to immediately post certified copies of said ordinance in three of the most public places of said village, as required by law, and also to file for record in the recorder's office of said Cook county a duly certified copy of said ordinance or to furnish to your petitioner a duly certified copy of said ordinance upon the tender to said Day therefor his legal fees, and that said Day pay the costs of these proceedings.

MICHAEL GORMLEY.

Michael Gormley on oath says the foregoing petition by him signed is true in substance and in fact.

[SEAL] MICHAEL GORMLEY.

Subscribed and sworn to before me this 17th day of January, 1882.

SELDON FISH,
Notary Public.

107 & 108 *Charter of the Village of Glencoe*, 1870.

109 An act to incorporate the village of Glencoe.

ARTICLE I.

On boundaries and general powers.

Section 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That the inhabitants of the town of Glencoe, in Cook county, be, and are hereby, constituted a body politic and corporate by the name and style of "The Village of Glen-

coe," and by that name shall have perpetual succession, and may have and use a common seal and change and alter the same at pleasure.

§ 2. The boundaries of said village shall be as follows: Commencing at a point in Lake Michigan one-half mile east of the point where the one-eighth section line in the north half of section six, in township forty-two north, of range thirteen east, of the third principal meridian, meets the shore of said lake; thence west to the last-named point and upon said one-eighth section line to the township line; thence south on said township line to the one-eighth section line in the north half of section eighteen, in the said township and range; thence east on the last named one-eighth section line continued to the quarter-section line of section seventeen; thence north on the quarter-section line of said section seventeen and section eight, in said township and range, to the shore of said lake; thence east one-half mile, and thence northwesterly to the point of beginning: Provided, The limits of said village may be extended so as to include therein any addition that may be made thereto and any tract of land the owner or owners of which or a majority of them may desire to have included in said village.

§ 3. The inhabitants of said village, by the name and style aforesaid, shall have power to sue and be sued, implead and be impleaded, defend and be defended, in all courts of law and equity and in all actions whatsoever; to purchase, receive, and hold property, both real and personal, within the limits of the corporation; to purchase, receive, and hold real property beyond the limits of the corporation for burial-grounds or other corporate purposes for the use of said inhabitants; to improve and protect such property and lease, sell, convey, and dispose of the same, and do all other acts and things in relation thereto that natural persons may do.

ARTICLE II.

Of the council and president.

Section 1. The municipal government of said village shall be vested in a council consisting of a president and five councilmen, who shall be elected annually by the legal voters of said village and continue in office until their successors are elected and qualified.

§ 2. No person shall be member of the village council unless he be a legal voter and shall have been an actual resident of said village one year immediately preceding his election.

§ 3. Every member of the council, before entering upon the duties of his office, shall take and subscribe to an oath that he will support the Constitution and laws of the United States and this State, and that he will well and truly perform the duties of his office to the best of his skill and abilities.

§ 4. The council shall be judge of the qualifications, elections, and returns of its own members, and shall determine all contested elections.

§ 5. A majority of the council shall constitute a quorum to do

business, and a smaller number shall adjourn from time to time and compel the attendance of absent members under such fines and penalties as may be prescribed by ordinance.

§ 6. The council shall have power to determine the rule of its proceedings, punish its members and other persons for disorderly conduct, and, with the consent of two-thirds of the members elected, expel a member.

§ 7. The council shall cause to be kept a journal of its proceedings, and such journal or a certified copy thereof, under the hand of clerk and seal of the corporation, shall be received in all courts and other places, without further proof, as evidence of all matters therein contained.

§ 8. No member of the council, during the term of his office, shall be appointed to any office under the authority of the council except temporary clerk, nor make any contracts with the council or corporation, nor be in any manner interested in such contract.

111 § 9. The council shall cause to be published a full and complete statement of all moneys received and expended by the corporation during the preceding year and on what account received and expended.

§ 10. Whenever there shall be a tie in the election for members of the council the judges of election shall certify the same to the police magistrate, who shall determine the same by lot in the presence of the judges, who shall enter the result thereof on their returns of said election.

§ 11. There shall be a stated meeting of the council in each month, and such other meetings at such times and places as may be prescribed by ordinance. The president and any two councilmen may call special meeting of the council.

§ 12. The president shall preside at all meetings of the council, preserve order, and have the casting vote and no other. In case of his absence at any meeting the council shall appoint one of their number to preside.

§ 13. The president shall be the chief executive officer of the corporation, and as such shall be a conservator of the peace and have power to arrest, without warrant, and bring to trial any person guilty of a violation of any ordinance or provision of this act; and he is hereby authorized to call upon any male resident of said village over the age of eighteen to aid in the enforcement of the ordinances of said village and to preserve the peace, and any person failing or refusing to obey such call shall forfeit and pay to the said corporation a fine not exceeding ten dollars.

§ 14. The president shall inspect the conduct of all subordinate officers of said village, and cause negligence and positive violation of duty to be prosecuted and punished. He shall have power, whenever he may deem it necessary, to require — any of the officers of the said corporation an exhibit of his books and papers, and he shall perform such other additional acts and duties as may be required of him by ordinance.

ARTICLE III.

Of elections and officers.

SECTION 1. There shall be elected by the qualified voters of said village, annually on the first Tuesday of April, a president and five councilmen, an assessor, collector, street commissioner, marshal, and police constable, and quadrennially a police magistrate, who shall hold their respective offices until their successors are elected and qualified: Provided, When the inhabitants of said village
112 number three thousand an additional police magistrate and constable may be elected. All vacancies, except of police magistrate, shall be filled by appointment, to be nominated by the president and confirmed by the council. Removal from the corporate limits, refusal to serve or neglect to serve for one month, shall constitute a vacancy.

§ 2. At all elections the polls shall open at 9 o'clock in the morning and close at 5 o'clock in the evening. Ten days' notice of the time and place of each election shall be given by posting three or more written or printed notices thereof in as many public places within the corporate limits, such notices to specify what officers and what taxes, if any, are to be voted for; notices of the first election to be signed by three or more legal voters, and of subsequent elections by the corporation clerk. At the first election under this act the electors present at the time of opening the polls shall elect two of their number to act as judges and one as clerk, who shall give certificates to the persons elected and make returns of the poll book and certificate attached to the clerk when he shall be appointed and enters upon the duties of his office. All other elections shall be held by two competent persons appointed by the council to act as judges and the corporation clerks: Provided, In the absence of any of these parties the electors present at the opening of the polls may elect any of their number to fill the place of such absentees, and all judges and clerks of elections shall be duly sworn and shall conduct such elections as is required by the general election laws of this State, shall canvass the votes, and make returns thereof to the corporation clerk. The corporation clerk shall make duplicate certificates of the election of police magistrates and forward the same to the clerk of the Cook county court, whose duty it shall be to file one certificate in his office and forward one to the Governor of the State of Illinois for a commission for the person elected. A failure to elect officers on the day herein named shall not operate as a dissolution of the corporation; but such election may be held on any subsequent day by giving the required notice.

§ 3. No person shall vote at any election of officers of said corporation unless he be qualified to vote for representatives to the General Assembly and shall have resided within the limits of said village for sixty days next preceding such election. No person shall be elected or appointed to any office under this act unless he be a qualified voter. All elections shall be by ballot, and tie votes, ex-

cept for members of the council, shall be decided by lot by the president in presence of the council.

113 § 4. The assessor, collector, street commissioner, marshal, and police constable, before entering upon the duties of their office, shall take and subscribe to an oath, to be filed with the clerk, and give bonds to the corporation, by its corporate name, for the faithful performance of their duties, and under such penalties and conditions as may be required by law and the council, to be approved by the council.

§ 5. The assessor and collector shall perform such duties as may be required of them by law or ordinance, and shall receive such fees for their services as the council may fix: Provided, That their fees shall not exceed the fees fixed by the laws of this State for like services.

§ 6. The street commissioner, under the direction of the council, shall have supervision of roads, streets, bridges, sidewalks, crossings, alleys, lanes, public grounds, parks, commons, drains, ditches, sewers, corporate buildings, and corporate property, and all improvements made by the corporation, and perform such other duties as may be prescribed by ordinance, and receive such fees as may be fixed by the council.

§ 7. The marshal shall be chief of the police, chief of the fire department, conservator of the peace, and health officer, and perform such duties as the council may from time to time direct by ordinance or otherwise, and receive such fees for his services as they may fix. The marshal, policemen, or police constables, or any or either of them, shall have authority to arrest, with or without warrant, any person committing crime or found engaged in violating any provisions of this act or any ordinance of said corporation, or any person liable to escape before warrant can be procured, and for such purpose may follow any such person into any part of Cook and Lake counties and there arrest such person and confine such person in a safe place or hold him in custody until he may be brought to trial; and any person who shall forcibly resist the marshal or any policeman or police constable in the discharge of his duties shall, upon conviction thereof, forfeit and pay a fine of not less than ten dollars and not exceeding one hundred dollars.

§ 8. The police magistrate shall be commissioned and qualified in the same manner as justices of the peace, and shall have the same jurisdiction, powers, emoluments, and fees and shall do and perform all acts and things authorized by law as other justices of the peace in Cook county. He shall be a conservator of the peace and have jurisdiction in all cases arising under this act and the ordinances of the corporation, in preference to any other justice of the peace, though not exclusive jurisdiction thereof, and shall be entitled to the same fees for his services as are now or may be allowed

114 by the laws of this State for similar services, and to be collected in the same manner. Appeals and changes of venue may be taken from him in the same manner as from other justices of the peace, and in case of malfeasance or misfeasance in office he shall be subject to the same fine and penalties as are imposed by

law upon other justices of the peace. It shall be the duty of any justice of the peace of Cook county, when an appeal is taken to him from such police magistrate, to hear and determine the case; also upon complaint being made to him for any violation of this act or any ordinance to issue his warrant, process, or summons, and exercise the same jurisdiction as such police magistrate, and be entitled to the same fees, to be collected in the same manner. No person shall be eligible to office of police magistrate unless he shall have resided in said village one year next preceding his election, and in case of a vacancy the council shall order a special election to fill such vacancy.

§ 9. The police constable of said village and all other constables are hereby authorized and directed to execute any process or order issued or made by such police magistrate in the same manner as process is executed from other justices of the peace, and shall receive such fees therefor as are allowed by the laws of this State for similar services, and to be collected in the same manner. The police constables shall have the same power and authority in all cases arising under the laws of this State as other constables, and be entitled to the same fees for services rendered. The police constables and other constables serving any process or writ issued or made by such police magistrate for the violation of any of the provisions of this act or of any ordinance of said corporation, or for any criminal offence, shall have authority to serve the same anywhere in Cook or Lake county; and for all negligence or violation of duty the police constable shall be subject to the same fine and penalties as other constable under the laws of this State.

ARTICLE IV.

Powers of council.

SECTION 1. The council shall have power to levy and collect taxes on all taxable property, real and personal, within the limits of said corporation, not exceeding two per cent. per annum upon the assessed valuation thereof, for general purposes, unless a greater amount of tax is authorized at an annual or special election, and to levy, assess, and collect special taxes or assessments according to law for local purposes or improvements, and to enforce the payment of such taxes and assessments in any manner to be prescribed by ordinance not repugnant to the Constitution and laws of the United States or of this State.

115 § 2. To borrow money on the credit of said corporation by issuing bonds at a rate of interest not exceeding ten per cent. per annum: Provided, That the outstanding bonded indebtedness shall not exceed ten per cent. of the assessed valuation of the property within the limits of said village, and that any tax levied in any one year for the payment of the principal of such bonded indebtedness shall not exceed one per cent. of such assessed valuation.

§ 3. To appropriate money and provide for the payment of all debts and expenses of the corporation.

§ 4. To appoint a clerk, who shall be clerk of the council and of the corporation, treasurer, policemen, and such other officers and agents as the council may deem necessary to carry this act and the ordinances made pursuant thereof into full effect; to prescribe their duties; to fix their compensation, and to remove any appointee from office; to require all officers and agents so appointed to take an oath of office and file the same with the clerk, and to give bond for the faithful performance of their duties, to be approved by the council and in such penalty as the council may direct, all such bonds to be given to the corporation by its corporate name; to examine at any time the official bonds of the officers and agents of this corporation, and, if found insufficient, to require new bonds; and upon such officer or agent failing to furnish such new bond satisfactory to the council the council shall declare his place vacant.

§ 5. To make regulations to prevent the introduction of contagious diseases into the village and to secure the general health of the inhabitants; to declare what shall be a nuisance, and to prevent, abate, and remove the same when located in the corporate limits or within one mile thereof and not within the village of Winetka, and to punish the author thereof.

§ 6. To lay out, open, alter, widen, extend, establish, vacate, abolish, grade, pave, or otherwise improve and keep in good repair all roads, streets, lanes, avenues, alleys, squares, commons, parks, or other public grounds or places in said village, and to have exclusive control of the same, and, in order to keep the same in good repair, may require every able-bodied male inhabitant over the age of twenty-one and under fifty to labor on the same not exceeding three days in every year or pay commutation in lieu thereof at the rate of one dollar for each day they may be required so to labor; and the inhabitants of said village are hereby exempted from working on any road beyond the limits of said corporation and from paying any tax on property within the corporate limits; to procure labor to be done thereon, and to cause any road, street, lane, avenue, alley, public square, common, or park laid out or to be laid out, widened, or extended to be surveyed and platted and the plat thereof to be filed with the corporate clerk, together with the minute of the survey.

§ 7. To build and keep in repair bridges, culverts, street crossings, sidewalks, drains, ditches, and sewers, and to provide for lighting the streets and erecting lamp-posts.

§ 9. To provide for protecting, inclosing, adorning, or otherwise improving any squares, commons, parks, or other public grounds or places belonging to said corporation, and for setting out or planting trees and protecting the same along the roads, streets, and avenues in said village.

§ 9. To provide for the erection of all needful buildings for the use of the inhabitants of said village.

§ 10. To provide for surveying, platting, numbering, and recording the plat of any and all out-lots or lands within the limits of said corporation and the additions thereto, and to cause such out-lots and lands to be designated by such numbers in the assessment lists, and

to sell the same for the non-payment of taxes by such designation.

§ 11. To provide for surveying, platting, and recording the plat of a cemetery for the use of the inhabitants of said village, and for protecting, ornamenting, and keeping the same in repair; and such cemetery shall be forever exempt from taxation; and to determine the location and boundaries of cemeteries, and prevent the interment of the dead in such places as may be injurious to the health of the inhabitants.

§ 12. To provide the village with water, to dig wells and cisterns, and to erect hydrants and pumps for the use of the inhabitants.

§ 13. To provide for the prevention and extinguishment of fires, and to organize and regulate fire companies and determine the fire limits.

§ 14. To provide for the inspection of hay, grain, coal, lumber, butter, lard, and other provisions, and for the measurement of wood and fuel.

§ 15. To erect market-houses, to establish markets and market places, and to provide for the government and regulation thereof.

§ 16. To regulate the storage of gunpowder, tar, pitch, turpentine, rosin, and other combustible materials, and to prevent the firing of guns and other fire-arms or combustibles within the limits of said corporation.

§ 17. To prevent the running at large of mischievous or diseased animals; to prevent the indecent exhibition of horses and other animals, and to regulate or prohibit the running at large of horses, mules, cattle, sheep, swine, goats, dogs, and other animals, and to provide for the destruction of dogs running at large contrary to ordinance.

117 § 18. To establish and maintain a public pound, appoint a pound-master, prescribe his duties, and fix his fees.

§ 19. To compel persons to fasten horses, mules, and other animals attached to vehicles while standing upon any road, street, lane, alley, or public place or unenclosed lot in said village, and to prevent animals from standing upon the crossings and sidewalks; to prevent the abuse of animals, and to prevent horse-racing or any immoderate driving within the limits of said corporation of horses or other animals.

§ 20. To regulate the fixing of chimneys and flues and partition walls and fences.

§ 21. To prohibit and prevent any indecent exposure of person or other lewd or shameful practice, and punish the persons guilty thereof.

§ 22. To prevent, sup ress, and prohibit any riot, affray, tumult, and disturbance of the peace by loud or unusual cries, noises, or any other disorderly conduct, disorderly assemblages, assaults, assaults and batteries, battles by agreement, fighting matches, shooting matches, horse-racing, and cock-fighting within the limits of said corporation, and to restrain and punish vagrants, mendicants, beggars, and prostitutes.

§ 23. To prohibit, prevent, and punish any wanton injury to pri-

vate property, disorderly intrusion upon any private premises, petty pilfering, destruction or injury of shade trees, or any other disorderly proceedings endangering or trespassing upon the rights of private persons or property.

§ 24. To license, tax, regulate, or suppress theatrical and other exhibitions, shows, and amusements, ball alleys, and billiard tables when the same are carried on as a business and for a pecuniary benefit.

§ 25. To license, tax, and regulate auctioneers, peddlers, hawkers, ordinaries, retailers, taverns, brokers, pawnbrokers, money changers, hackney carriages, coaches, omnibuses, wagons, carts, and drays, and to fix the rate to be charged for the carriage of persons and for the wagonage, cartage, and drayage of property.

§ 26. To restrain, prohibit, and suppress tippling houses, dram shops, gambling houses, faro boards, lotteries, gift enterprises, bawdy houses, and other disorderly establishments.

§ 27. To restrain, prohibit, and suppress all descriptions of gambling, swindling, and fraudulent abuses, and to punish all persons in any manner engaged therein.

§ 28. To establish and regulate the police of said village, and provide for the protection of property and the inhabitants thereof.

118 § 29. To establish rules and regulations for bathing and bathing houses.

§ 30. To establish crossings on railroads, within the corporate limits, and to make necessary rules and regulations for keeping the same unobstructed; to regulate the speed that railroad engines and trains may run within the corporate limits, and prevent the obstruction of streets and alleys by the standing of cars upon the same, and require railroad companies to keep their ditches, bridges, and crossings within the corporate limits in good condition.

§ 31. To provide for taking enumerations of the inhabitants of said village, and at any time to divide the said village into wards, alter the boundaries thereof, and erect additional wards as occasion may require; and when the council so divide the village into wards the same shall consist of one president and two councilmen for each ward; and the council may at any time divide the village into two or more election districts and establish polling places therein.

§ 32. To provide a prison or other secure place in which any person arrested for violating any criminal law of this State or any ordinance or provisions of this act may be confined until he may be examined and tried, and to provide for the punishment of offenders against any ordinance or provision of this act by imprisonment not to exceed twenty days in such prison or other secure place, and defray the expenses of the same.

§ 33. To pass all ordinances which the council may deem necessary and proper for carrying into full effect the provisions of this act and for the regulation of the municipal government of said village and to execute the same, and to impose fines, forfeitures, and penalties for the violation of any ordinances or any provisions of this act, and to provide for the enforcement of such ordinances and the recovery of such fines, forfeitures, and penalties in any manner not repugnant

to the Constitution of the United States and of this State: Provided That any person charged with a breach of any provision of this act or any ordinance shall be entitled to trial by jury in the manner provided by statute for persons charged with assaults and assaults and battery: And provided, That in no case shall any such fine or forfeiture exceed the sum of one hundred dollars for any one offence, and any such fine or forfeiture may be recovered before the police magistrate or any justice of the peace in Cook county in the corporate name; and the police magistrate or justice of the peace may, unless the amount of such judgment be paid forthwith or satis-
119 *satis*factory security given, issue executions against the goods and chattels of the defendant so fined immediately upon the rendition of judgment, or he may commit such defendant to the prison or other secure place provided by the council or to Cook county jail until such judgment and costs are paid or there remain 48 hours, and, if the fine exceed ten dollars, then to remain in such confinement twenty-four hours for every five dollars over and above the said ten dollars, and so on in proportion to the amount of said fine.

ARTICLE V.

Taxes—general and special.

SECTION 1. Before the annual election the council shall make an estimate of the taxes required for the ensuing year, and if the amount estimated exceeds two per cent. of the assessed valuation of the taxable property within the corporate limits the council shall cause to be specified in the election notices what taxes over and above two per cent. are required and for what purpose, and on the day of election, at 2 o'clock p. m., the judges of election shall call the voters present to order, and the clerk shall state what taxes are required, as per election notice; and the voters shall declare by vote what taxes over and above the said two per cent. shall be levied and collected and for what purpose, and all such taxes then ordered shall be levied and collected by the council: Provided, The council may call a special election to vote for taxes upon giving similar notice thereof.

§ 2. The assessor, governed by the laws of the State directing the assessing of property for State and county purposes, shall make an assessment of all taxable property in said village and on or before the first day of June deposit his assessment-roll, duly certified, with the clerk; and the clerk shall, within ten days thereafter, post up notices in four public places in said village that the assessment-roll is filed in his office and open to the inspection of all parties interested, and that at the regular meeting of the council in July the council will consider any objections made to said roll. When the council has considered all such objections and amended or corrected said roll as it shall seem proper the council shall confirm the same, and from and after such confirmation all taxes levied upon real estate are declared a lien thereon until paid.

§ 3. The clerk shall make a copy of said assessment-roll and ex-

tend thereon the taxes levied, and on or before the first day of September issue a warrant under the seal of said corporation, signed by the president and clerk, with such a copy attached, to the collector of said village commanding him to proceed and collect the same and make due return thereof within ninety days after date. In making such collection the said collector is vested with the same powers given to town collectors. He shall proceed in the same manner to collect and make returns of delinquent taxes to the clerk. He shall pay over to the treasurer all money collected, less his percentage, as fast as collected, and be liable with his sureties for all taxes that, by the use of due diligence, he might have collected and shall fail so to do.

§ 4. At any term of the county court of Cook county after the return of the collector is made the clerk may proceed to obtain judgment against the lands specified in said returns and on which the taxes may remain unpaid for the taxes and costs thereon and sell the same under the order of said court, and in so doing he shall be governed by the laws of this State prescribing the duties of county treasurer in like cases and be entitled to the same fees; and the county court of Cook county shall exercise the same jurisdiction and the clerk of said court shall perform the same duties, with like fees, as in other cases of judgment and sale of lands for delinquent taxes.

§ 5. Lands sold for taxes under this act may be redeemed in the same manner as lands sold for the non-payment of State and county taxes, and, if not redeemed, deeds thereof may be given in like manner.

§ 6. When the council shall determine to open, lay out, alter, widen, or extend any public highway, street, avenue, lane, or alley, or shall determine to make any improvement the cost of which or part thereof is to be paid by special assessment, the council shall appoint two competent persons, who, with the assessor, shall constitute commissioners to make such assessment. The clerk shall issue to them his warrant commanding them to make the assessment ordered within thirty days from date thereof. The commissioners, before entering upon the duties of their office, shall be sworn by the clerk or some person authorized to administer oaths faithfully and impartially to make such assessments to the best of their ability, and in making such assessment shall determine damage, if any, occurring to the owner or owners of any land in opening, laying out, altering, widening, or extending any such public highway, street, avenue, lane, or alley or in making any such improvements, and determine the benefits, if any, occurring to the owner or owners of land thereby, and also determine the benefits accruing thereby to the public, and in all things make such assessments according to law, and shall file their assessment-roll, with the warrant and their certificate attached, with the clerk within the time prescribed by the warrant: Provided, No public highway, street, avenue, lane, or alley shall be opened, laid out, altered, widened, or extended only upon the petition of two-thirds of the owners of lands through which the same may pass or upon the pe-

tition of the owners of one-half the property fronting on the same or upon the petition of one-half the legal voters or the petition of fifty resident freeholders of said village.

§ 7. After the filing of such assessment-roll the same proceedings shall be had for the inspection, correction, and confirmation thereof; for the collection of the special taxes or assessments thereon; for judgment and sale for delinquencies; for redemption from sale and for giving of deeds, in case of non-redemption, as described in preceding sections, concerning taxes for general corporate purposes; and from and after the confirmation of such assessment-roll the special taxes or assessments levied shall be *in* a lien upon the lands therein named until paid: Provided, The council may for good cause set aside such assessment and cause another to be made by the same or other commissioners, and the council may suspend for a time the collection of such assessment: And provided, The council shall have power to sue for and recover such special taxes or assessments in the corporate name before any court of competent jurisdiction in an action of debt.

§ 8. Instead of a general assessment the council may adopt the then last assessment made under the general laws of this State, and the council may direct the clerk to certify general and special assessments to the clerk of the county court of cook county, who shall extend the same upon the town collector's book, and for the collection thereof the same proceedings shall be had and the same fees allowed as in the case of State and county taxes, and the town collector and county treasurer shall pay over all money collected thereon to the treasurer of the village.

Article VI.

Schools.

Section 1. The territory included within the corporate limits and all additions to said village is hereby made a school district for school purposes, and the council shall be *ex officio* school directors thereof and shall have the supervision and control of public schools therein and shall have power to appoint a superintendent of schools, to purchase and hold real estate for school purposes, to build and keep in repair school-houses; to establish and maintain schools, to levy and collect all taxes for school purposes voted for by the
122 legal voters of the village upon the taxable property within the corporate limits, and to do and perform all things that school directors may do under the general school laws of the State not inconsistent with this act.

§ 2. The council shall have power to establish and maintain a high school and schools of such grade and character as may meet the wants of the inhabitants, to fix the terms and conditions upon which scholars residing beyond the corporate limits may attend the schools located in said corporate limits, to fix the salaries of teachers, to make all needful rules and regulations for the government of said schools, for the advancement of the students and preservation of their morals, and the selling, bartering, exchanging, trafficking in or

in any manner disposing of any spirituous, vinous, malt, fermented, mixed, or intoxicating liquors within the limits of said corporation and within one mile thereof, not to interfere in any manner with the village of Winnetka, is hereby expressly prohibited, and any person who shall violate this provision, either directly or indirectly, by giving away or in any other manner, shall forfeit and pay the sum of twenty-five dollars for the first offence and any amount not less than fifty nor more than one hundred dollars for each subsequent offence, to be recovered in the corporate name before the police magistrate or any justice of the peace in the county where the offence was committed or where the offender may be found, and such party may be committed until the fine and costs are paid, and this forfeiture may be enforced from and after the passage of this act, and all fines recovered and collected under this provision shall be applied to the support of schools.

§ 3. The superintendent, under the direction of the council, shall have the custody of all school property and the general supervision of the schools. He shall examine applicants for teaching, employ teachers, prescribe the course of studies, and perform such duties as may be required of him by the council.

§ 4. The treasurer of the corporation shall be school treasurer, and all moneys collected by tax or otherwise in the corporate limits for school purposes shall be paid over to him, and all public officers required by law to pay money for school purposes to the school treasurer of township forty-two north of range thirteen east of third principal meridian shall pay the ratable proportion thereof direct to the treasurer of said corporation, and it is hereby made the duty of the school treasurer of said township to pay over to the treasurer of said corporation out of the township school fund of said township an amount bearing the same proportion to the whole amount of said fund as the lands in said corporate limits bear to all
123 the lands in said township, and upon his failure so to do the council may institute suit in the corporate name before any court of competent jurisdiction and recover such proportionable amount, and the treasurer shall hold and manage such school funds under the direction of the council in the same manner as township treasurer.

ARTICLE VII.

Miscellaneous provisions.

SECTION 1. The style of the ordinances of said village shall be, "Be it ordained by the council of the village of Glencoe."

§ 2. All orders, ordinances, by-laws, and resolutions passed by the council shall be recorded in a book to be kept for that purpose, which book, purporting to be a record of the ordinances of said village, shall be received in evidence in all courts and places without further authentication or proof.

§ 3. Printed or written copies of all ordinances passed by the council shall be posted up in at least three of the most public places in said village within thirty days after their passage, and all ordi-

nances shall take effect at the expiration of ten days after such posting.

§ 4. All ordinances, orders, by-laws, resolutions, and proceedings of the council may be proven by the seal of the corporation and the signature of the clerk, and when printed or published in book or pamphlet form and purporting to be printed or published by authority of the council shall be received in evidence in all courts and places without any further authentication or proof.

§ 5. All suits, actions, and prosecutions instituted, commenced, or brought by the corporation hereby created for any violation of ordinances or of this act, for the recovery of any fine, forfeiture, or penalty, shall be commenced by ordinary summons and in the name of the village of Glencoe; or, in case of complaint, upon oath, before the police magistrate or any justice of the peace that any person has violated any provision of this act or any ordinance of said corporation, and that there is danger of the offender escaping or absconding, the police magistrate or justice shall issue his warrant for the arrest of such offender, and may commit or hold him to bail until tried.

§ 6. All fines, forfeitures, and penalties received or collected for the breach of any ordinance or this act and all license fees and other money collected by virtue of this act or any ordi-
124–126 nance passed in pursuance of this act shall be paid by the officer or person receiving the same to the treasurer of said village, who shall give proper vouchers therefor.

§ 7. No money shall be paid out of the treasury of the said corporation save upon resolution of the council specifying to whom and upon what account the same is paid and on order, signed by the president and countersigned by the clerk, drawn in pursuance of such resolution, and the clerk shall keep a record of all such orders made and the treasurer of all orders paid, giving date, name of payee, amount, and upon what account paid.

§ 8. The treasurer shall keep a separate account of all moneys collected and paid out for different purposes, and money collected for a certain purpose shall not be paid out for any other purpose, unless not actually needed for the purpose for which it was collected, and only upon the special order of the council.

§ 9. This act is hereby declared a public act, and shall take effect and be in full force from and after its passage.

Approved March 29, 1869.

127 & 128 EXHIBIT C.

An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

1. Be it ordained by the council of the village of Glencoe—

SECTION 1. That the following streets and parts of streets as laid out on a plat entitled Gormley's Addition to Glencoe, being a subdivision of the southwest quarter of section seven and the west half of the northeast quarter of the northwest quarter of section eighteen,

in any manner disposing of any spirituous, vinous, malt, fermented, mixed, or intoxicating liquors within the limits of said corporation and within one mile thereof, not to interfere in any manner with the village of Winnetka, is hereby expressly prohibited, and any person who shall violate this provision, either directly or indirectly, by giving away or in any other manner, shall forfeit and pay the sum of twenty-five dollars for the first offence and any amount not less than fifty nor more than one hundred dollars for each subsequent offence, to be recovered in the corporate name before the police magistrate or any justice of the peace in the county where the offence was committed or where the offender may be found, and such party may be committed until the fine and costs are paid, and this forfeiture may be enforced from and after the passage of this act, and all fines recovered and collected under this provision shall be applied to the support of schools.

§ 3. The superintendent, under the direction of the council, shall have the custody of all school property and the general supervision of the schools. He shall examine applicants for teaching, employ teachers, prescribe the course of studies, and perform such duties as may be required of him by the council.

§ 4. The treasurer of the corporation shall be school treasurer, and all moneys collected by tax or otherwise in the corporate limits for school purposes shall be paid over to him, and all public officers required by law to pay money for school purposes to the school treasurer of township forty-two north of range thirteen east of third principal meridian shall pay the ratable proportion thereof direct to the treasurer of said corporation, and it is hereby made the duty of the school treasurer of said township to pay over to the treasurer of said corporation out of the township school fund of said township an amount bearing the same proportion to the whole amount of said fund as the lands in said corporate limits bear to all
123 the lands in said township, and upon his failure so to do the council may institute suit in the corporate name before any court of competent jurisdiction and recover such proportionable amount, and the treasurer shall hold and manage such school funds under the direction of the council in the same manner as township treasurer.

Article VII.

Miscellaneous provisions.

Section 1. The style of the ordinances of said village shall be, "Be it ordained by the council of the village of Glencoe."

§ 2. All orders, ordinances, by-laws, and resolutions passed by the council shall be recorded in a book to be kept for that purpose, which book, purporting to be a record of the ordinances of said village, shall be received in evidence in all courts and places without further authentication or proof.

§ 3. Printed or written copies of all ordinances passed by the council shall be posted up in at least three of the most public places in said village within thirty days after their passage, and all ordi-

nances shall take effect at the expiration of ten days after such posting.

§ 4. All ordinances, orders, by-laws, resolutions, and proceedings of the council may be proven by the seal of the corporation and the signature of the clerk, and when printed or published in book or pamphlet form and purporting to be printed or published by authority of the council shall be received in evidence in all courts and places without any further authentication or proof.

§ 5. All suits, actions, and prosecutions instituted, commenced, or brought by the corporation hereby created for any violation of ordinances or of this act, for the recovery of any fine, forfeiture, or penalty, shall be commenced by ordinary summons and in the name of the village of Glencoe; or, in case of complaint, upon oath, before the police magistrate or any justice of the peace that any person has violated any provision of this act or any ordinance of said corporation, and that there is danger of the offender escaping or absconding, the police magistrate or justice shall issue his warrant for the arrest of such offender, and may commit or hold him to bail until tried.

§ 6. All fines, forfeitures, and penalties received or collected for the breach of any ordinance or this act and all license fees and other money collected by virtue of this act or any ordi-
124–126 nance passed in pursuance of this act shall be paid by the officer or person receiving the same to the treasurer of said village, who shall give proper vouchers therefor.

§ 7. No money shall be paid out of the treasury of the said corporation save upon resolution of the council specifying to whom and upon what account the same is paid and on order, signed by the president and countersigned by the clerk, drawn in pursuance of such resolution, and the clerk shall keep a record of all such orders made and the treasurer of all orders paid, giving date, name of payee, amount, and upon what account paid.

§ 8. The treasurer shall keep a separate account of all moneys collected and paid out for different purposes, and money collected for a certain purpose shall not be paid out for any other purpose, unless not actually needed for the purpose for which it was collected, and only upon the special order of the council.

§ 9. This act is hereby declared a public act, and shall take effect and be in full force from and after its passage.

Approved March 29, 1869.

127 & 128 EXHIBIT C.

An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

1. Be it ordained by the council of the village of Glencoe—

SECTION 1. That the following streets and parts of streets as laid out on a plat entitled Gormley's Addition to Glencoe, being a subdivision of the southwest quarter of section seven and the west half of the northeast quarter of the northwest quarter of section eighteen,

being all in township forty-two, range thirteen, in Cook county and State of Illinois, and filed for record in the recorder's office of Cook county and State of Illinois March 11th, 1874, in Book Seven of Plats, page thirty-six—

1. Washington avenue between Grove street and Bluff street and Washington avenue between Valley street and Prairie street.
2. Adams avenue between Valley street and Prairie street.
3. Jefferson avenue.
4. Madison avenue.
5. Munroe avenue.
6. Jackson avenue.
7. Bluff street between Adams avenue and Jackson avenue.
8. Valley street between Adams avenue and Jackson avenue.
9. Wood street between South avenue and Jackson avenue.
10. Prairie street between South avenue and Jackson avenue—

be, and the same is, hereby vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

And on the day and year last aforesaid, to wit, January 17th, A. D. 1882, there issued out of the office of the clerk of said court the people's writ of summons; which writ, with the return
129 & 130 of the sheriff thereon endorsed, is as follows, to wit:

STATE OF ILLINOIS, }
Cook County, } ss:

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon John L. Day, clerk of the council and of the village of Glencoe, if he shall be found in your county, personally to be and to appear before the superior court of Cook county on the 23rd day of January, 1882, to be holden at the court-house, in the city of Chicago, in said Cook county, to answer unto Michael Gormley in a certain action of mandamus.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the
[SEAL.] seal thereof, at Chicago aforesaid, this 17th day of January, A. D. 1882.

JOHN J. HEALY, *Clerk.*

P'd 1.00.

Served the within writ by reading the same to the within-named defendant, John L. Day, and by delivering to and leaving with said John L. Day a true copy thereof the 17th day of January, 1882.

O. L. MANN, *Sheriff,*
By CHAS. H. KELSEY, *Deputy.*

And afterwards, to wit, January 28, 1882, there was filed in the office of the clerk of said court a certain answer, which is in words and figures as follows, to wit:

131 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County. January Term, A. D. 1882.

JOHN L. DAY, Clerk, etc., *ats.* THE PEOPLE *ex rel.* MICHAEL GROMLEY. } 81204. Proceedings for Mandamus.

The answer of John L. Day, defendant, to the petition of Michael Gromley for a writ of mandamus.

This defendant, reserving to himself all right of exception to the said petition, for answer thereto says he believes it to be true that the relator is now and for more than ten years last past has been a resident and tax-payer of the village of Glencoe, in Cook county, Illinois. He also admits that said village was duly incorporated, as in said petition alleged; that ever since the first Tuesday in April, A. D. 1881, the council of said village has consisted of five councilmen and a president, and that this defendant has since that time been the clerk of said council and village. This defendant, further answering, admits that it is the duty of such clerk to keep a record of the acts and doings of said council, and within thirty days of the passage of any ordinance by said council to post three copies thereof, unless otherwise directed by said council, or unless for some other reason or cause the posting of said ordinances would be improper or ineffectual; but this defendant denies that it is the duty of said clerk of said —, upon request and the tender of any fees whatever, to make and deliver to every person interested a certified copy over his hand and the co porate seal of such village of any and all the records of said village in his possession.

This defendant, further answering, says it may be true, for anything he knows to the contrary, that said relator, being then
132 the owner of the premises described in said petition, caused the same to be subdivided into lots, blocks, streets, and alleys, and a plat of such subdivision to be recorded on the 11th day of March, A. D. 1874, as in said petition alleged, and that the relator has not sold or conveyed the land in said streets and alleys or any part thereof or in any manner incumbered the same since the recording of said plat, as alleged in said petition, and this defendant therefore neither admits nor denies the same, but leaves the relator to strict proof thereof; and this defendant, further answering, says that at the regular monthly meeting of said council of said village of Glencoe, held on the 3rd day of January, A. D. 1882, an ordinance, of which "Exhibit C" annexed to said petition is a copy, was presented to said council for its adoption; that upon such presentation objection was made by a number of said councilmen (the said number being more than a majority of the members of said council); that some person or persons other than the relator might be interested in the premises included in said subdivision and whose interest might be affected by the proposed vacation of said streets therein and who would object to such vacation if they had notice

thereof; that before the vote was taken on the question of the passage of said ordinance the president of said council, then and there from his place in said council, at the request of the members thereof, they then and there being in session, and for their information, asked the relator, who was then and there present, whether any other person or persons were interested in any portion of said premises, as owners or otherwise, or whose interest could be affected by or who would object to the proposed vacation of said streets; to which questions the relator then and there stated and assured to said council that he had not parted with his interest in any
133 portion of said premises; that there were no persons besides himself who had any interest whatever in the matter or who could or would complain of or object to such proposed vacation of said streets; whereupon and upon the faith of the said statement and assurance of said relator the said council adopted said ordinance.

That afterwards and on or about the 9th day of January, A. D. 1882, a majority of said councilmen learned, as this defendant is informed and believes, that the said statement so made as aforesaid by the relator were false and untrue. The said relator had, in fact, no right or interest whatever in the large portion of the premises included in said subdivision, but that the same were owned by persons who had no notice or knowledge of such proposed vacation, and whose interest as such owners would be greatly prejudiced thereby.

That on the day last mentioned a special meeting of said village council was called, in accordance with the requirements of law and of the charter of said village in that behalf, to be held on the 12th day of January, A. D. 1882, for the purpose of taking action in connection with the reconsideration of said ordnance.

That the special meeting so called as aforesaid and for the purpose aforesaid was held on said 12th day of January, A. D. 1882, at which there were present the president and all the councilmen of said village except one, and that at said meeting such proceedings were had in compliance with the rules, regulations, and requirements of law and of said council in that behalf; that the vote of said regular meeting by which the said ordinance was passed was duly reconsidered, the said vote annulled and rescinded, and the whole matter referred to the committee on judiciary, the same being one of the committees of said council, as will more fully and particularly
134 appear by the minutes of the proceedings of said special meeting and the rules of said council, reference — which is hereby had and the same made a part of this answer.

The defendant, further answering, says he admits he is the keeper and custodian of the seal of said village, of its book of ordinances, and of the records of said council, but he denies that he has conspired with any person whatever to injure the relator; and as to the refusal to furnish, make, or post copies of said ordinance with which he is charged in said petition this defendant, in answer thereto, says that after the said special meeting had been held and the vote reconsidering said ordinance had been had and not before and within thirty days of the passage of said ordinance the relator demanded of this defendant that he should at once post said ordi-

nance; that this defendant, in reply to said demand, informed the relator of the proceedings had at said special meeting, and that he doubted the propriety of his posting said ordinance under the circumstances, but would decide as to his duties in the premises within the thirty days limited by the village charter for posting ordinances; that subsequently relator called on the defendant and demanded a copy of said ordinance, certified under the hand of this defendant as clerk of said council and the corporate seal of said village, with which demand this defendant declined to comply unless in such certificate should also be mentioned the proceedings had at said special meeting in connection with the reconsideration of said ordinance, but the relator refused to accept such a certificate, and these are the demands and refusals complained of in said petition and no other. This defendant, further answering, says that at another special meeting of said village council, held on the 24th day of January, A. D. 1882, pursuant to a call duly made in compliance with the requirements of law and of the rules and
135 charter of said village in that behalf, of which said meeting due notice had been given in compliance with the rules of said council, and at which all the members thereof were present except one councilman, the vote and action had at said regular meeting regarding the vacation of said streets was, by the vote of said council then and there had in due compliance with the rules and regulations of said council and of law in that behalf, duly reconsidered and annulled.

And this defendant, further answering, says that both the said special meetings were held within thirty days of the passage of said ordinance and before the same had been posted or had gone into effect, and before any interest in or to said streets had or could by virtue of said ordinance rest in the relator, and that by virtue of the said proceedings had at said special meetings and of the said reconsideration of said ordinance the same — in like condition as if it had never been passed; wherefore this defendant denies that the relator is entitled to the relief or any part thereof in the said petition demanded, and prays the same advantage of this answer as if he had pleaded to the said petition, and prays the judgment of the court here whether the relator ought to have a writ of mandamus in this behalf, and that he, the defendant, may be hence dismissed with his costs, etc.

JOHN L. DAY.

BUELL AND FITCH,
Att'ys for Def'ts.
WILLIAM H. KING AND
FREDERICK W. PACKARD,
Also for Defendants.

And afterwards, to wit, on the 30th day of January, A. D. 1882, there was filed in the office of the clerk of said court a certain replication, which is in words and figures as follows, to wit:

136 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County. January Term, 1882.

GORMLEY } 81204. Petition for Mandamus.
vs. }
DAY. }

The replication of Michael Gormley, petitioner, to the answer of John L. Day, the defendant.

This repliant, saving and reserving unto himself all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said petition he has already prayed.

MICHAEL GORMLEY, *Relator,*
By MORTON CULVER,
His Attorney.

And afterwards, to wit, on the thirty-first day of January, A. D. 1882, the same being one of the days of the January term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

137 MICHAEL GROMLEY } 81204. Petition for Mandamus.
vs. }
JOHN L. DAY. }

On the stipulation of the parties to this suit filed this cause is submitted to the court for trial without a jury, and the court now here, after hearing all the evidence adduced, the argument of counsel, and being fully advised in the premises, finds for the respondent, John L. Day; and it is ordered that said petition be, and is hereby, dismissed at plaintiff's costs.

Therefore it is considered by the court that the defendant do have and recover of and from the relator, Michael Gromley, his costs and charges in this behalf expended and have execution therefor.

Whereupon the said relator, having entered his exceptions herein, prays an appeal from the judgment of this court to the appellate court in and for the first district of the State of Illinois, which is allowed him on filing herein his appeal bond in the penalty of two hundred dollars, with surety thereon to be approved by the court, together with his bill of exceptions, within thirty days from this date.

And heretofore, to wit, January 28th, A. D. 1882, there was filed in the office of said clerk of said court a certain stipulation in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County. January Term, 1882.

GORMLEY
vs. } 81204. Petition for Mandamus.
138 DAY.

It is hereby stipulated and agreed—

1st. That jury be waived, provided case is tried before Judge Gary.

2nd. That said cause be submitted for trial before the Honorable Joseph E. Gary, one of the judges of said court.

3rd. That said cause shall be tried by Tuesday, January 31st, 1882, at furthest.

4th. That the defendant produce, without further notice, on the trial of said cause, volumes I, II, and III of the records of the council of the village of Glencoe.

MORTON CULVER,
Att'y for Michael Gormley.
BUEL & FITCH,
Attorneys for John L. Day.

Chicago, January 28th, 1882.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, John J. Healy, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain petition for mandamus, summons, answer, and replication now on file in my office, and a certain order made and entered of record in said court, and also a certain stipulation now on file in my office in a certain cause lately pending in said court, on the common-law side thereof, wherein Michael Gormley was petitioner and John L. Day defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 3rd day of October,
139 A. D. 1884.

[SEAL.] JOHN J. HEALY, *Clerk.*

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Sidney Smith, chief justice of the superior court of Cook county, in and for said county and State of Illinois, do hereby certify that

John J. Healy, whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of said superior court of Cook county and keeper of the seal and records thereof, duly elected, commissioned, and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record in the United States and elsewhere, and that his attestation is in due form of law and by the proper officer.

Given under my hand and seal, at Chicago, in said county, this third (3rd) day of October, A. D. 1884.

SIDNEY SMITH, [SEAL.]
Chief Justice of the Superior Court of Cook County.

The People of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, send Greeting:

Know ye that we, having examined the records and proceedings remaining in the office of the surrogate of our county of Otsego, do find in a book kept in said office in which wills and the proof
140 thereof are recorded, and in a book kept in said office in which letters testamentary are recorded a record of the last will and testament of Edward Clark, late of the town of Otsego, in the county of Otsego aforesaid, deceased, and of the proofs thereof, and of the letters testamentary issued on said last will and testament in the words and figures following—that is to say:

To the surrogate's court of the county of Otsego, in the State of New York:

The petition of James Meehan, one of the executors of the will below named, of the city of New York and State of New York, respectfully shows:

That Edward Clark died on the 14th day of October, 1882, at his residence, in Cooperstown, in the county of Otsego and State of New York, leaving real and personal property within your county, and leaving a will of real and personal property bearing date the 18th day of September, 1882, executed as prescribed by the laws of the State of New York, in which your petitioner and James Bunyan are designated as executors.

That the said testator was at the time of his death a resident of said county of Otsego and resided at Cooperstown, in said county.

That the said testator left surviving him no wife, and that the following are all the heirs and all the next of kin of the said testator and their respective ages and places of residence, to wit:

Alfred Corning Clark, his only son, residing at Cooperstown, county of Otsego, State of New York, which Alfred Corning Clark is his only child, only next of kin, and heir-at-law, and is of lawful age.

That no petition for probate of said will has been filed in any surrogate's court.

Your petitioner therefore prays that the said will may be
141 proved, and that the said heir and next of kin of the said testator may be cited to attend the probate thereof unless he attend the probate of said will and waive such citation.

JAMES MEEHAN, *Petitioner.*

Dated the 17th day of October, 1882.

STATE OF NEW YORK, } ss:
County of Otsego, }

James Meehan, being duly sworn, says he is the petitioner named in the foregoing petition, and that the said petition is true, to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he belives it to be true.

JAMES MEEHAN.

Subscribed and sworn to before me this 17th day of Oct., 1882.

JAS. H. KEYS, *Surrogate.*

STATE OF NEW YORK, } ss:
County of Otsego, }

James Meehan and James Bunyan, being duly sworn, severally say that they will well, faithfully, and honestly discharge the duties of their office as executors of the will of Edward Clark, the testator named in the within petition.

JAMES BUNYAN.
JAMES MEEHAN.

Subscribed and sworn to before me this 17th day of Oct., 1882.

JAS. H. KEYS, *Surrogate.*

142 Surrogate's Court.

In the Matter of Proving the Last Will and Testament of EDWARD CLARK, Deceased.

Alfred Corning Clark, the undersigned, heir-at-law and next of kin of Edward Clark, late of the town of Cooperstown, deceased, *all* being of full age, do- hereby consent that the last will and testament of the said deceased may be admitted to probate by the surrogate of the county of Otsego at any time, hereby waiving the issuing of and service upon me of a citation for that purpose.

ALFRED CORNING CLARK.

Dated the 17th day of Oct., 1882.

STATE OF NEW YORK, } ss:
County of Otsego, }

On this 17th day of October, 1882, before me personally came Alfred Corning Clark, known to me to be the same person who executed the foregoing consent, and acknowledged that he executed the same.

THEO. C. TURNER,
Notary Public.

At a surrogate court held at Cooperstown, in and for the county of Otsego, on the 17th day of October, 1882.

Present: Jas. H. Keys, surrogate.

In the Matter of Proving the Will of EDWARD CLARK, Deceased.

On reading and filing the petition of James Meehan, one of the executors named in the last will and testament of Edward Clark, late of the town of Otsego, in said county of Otsego, deceased, propounding the said last will and testament for probate,
143 and satisfactory proof having been taken as to the names and residence of the heirs and next of kin of said deceased, and all the heirs-at-law and next of kin of said deceased being of full age and consenting in writing:

It is ordered that the probate of said will be immediately taken.

JAS. H. KEYS, *Surrogate.*

At a surrogate's court held at Cooperstown, in and for the county of Otsego, on the 17th day of October, 1882.

Present: Jas. H. Keys, surrogate.

In the Matter of Proving the Will of EDWARD CLARK, Deceased.

All the heirs-at-law and next of kin of said deceased being of full age and consenting in writing, waiving the issuing of and service upon them of a citation to attend the probate of said will, and the executors having appeared in support of the proof of the said last will and testament, and after hearing the proofs and allegations of the said executors and the subscribing witnesses to the said will, and duly deliberating thereon—

It is adjudged and decreed that the said last will and testament was duly executed; that the same is genuine and valid, and that the said Edward Clark, deceased, at the time of executing the same was in all respects competent to make a last will and testament and to devise real estate and was not under any restraint.

And this court doth further order and decree that the said last will and testament and the proofs and examinations taken in respect to the same be recorded, and that the said last will and testament be admitted to probate, and that the same be, and hereby is,
144 established as a will of real and personal estate.

JAS. H. KEYES, *Surrogate.*

At a surrogate court held at Cooperstown, in and for the county of Otsego, on the 17th day of October, 1882.

Present: Jas. H. Keyes, surrogate.

In the Matter of the Execution of the Last Will and Testament of EDWARD CLARK, Deceased.

On reading and filing the oaths of James Bunyan and James Meehan, the executors named in the said last will and testament, it is ordered that letters testamentary issue to them pursuant to the statute.

JAS. H. KEYES, *Surrogate.*

Last Will and Testament of Edward Clark, Deceased.

Be it remembered that heretofore, to wit, on the 17th day of October, in the year of our Lord one thousand eight hundred and eighty-two, James Meehan, one of the executors named in the last will and testament of Edward Clark, late of the town of Otsego, in the county of Otsego, deceased, appeared in open court before the surrogate of the county of Otsego and made application to have the said last will and testament, which relates to both real and personal estate, proved, and on such application the said surrogate did ascertain by satisfactory evidence who were the heirs-at-law and next of kin of the said testator and their respective residences, and all the heirs and next of kin of said deceased being of full age and consenting in writing, waiving the issuing of and service upon them of a citation,
145 and an order having been made and entered admitting said will to immediate probate, and on the 17th day of October, A. D. 1882, no one appearing to oppose the probate of such will, such proceedings were thereupon had in said court afterwards that the said surrogate took the proofs of said will hereinafter set forth upon this 17th day of October, A. D. 1882, and he thereupon adjudged the said will to be a valid will of real and personal estate and the proofs thereof to be sufficient; which said last will and testament and proofs are as follows—that is to say:

Will.

I, Edward Clark, of Fernleigh, in the village of Cooperstown, in the county of Otsego and State of New York, declare this to be my last will and testament, hereby revoking all wills by me heretofore made:

First. I order and direct that my just debts and funeral expenses be paid.

Second. I give and bequeath to my friend and faithful agent, James Meehan, the sum of ten thousand dollars.

Third. I give and bequeath to my friend and faithful agent, James Bunyan, the sum of ten thousand dollars.

Fourth. I give and bequeath to my nephew, Nathan E. Clark, the sum of fifty thousand dollars.

Fifth. I give and bequeath to my nephew, Ogden Clark, the sum of fifty thousand dollars.

Sixth. I give and bequeath to my very dear daughter-in-law, Elizabeth Scriven Clark, the sum of two hundred and fifty thousand dollars.

Seventh. I give and bequeath to my grandson, Edward Severin Clark, the sum of two hundred and fifty thousand dollars.

Eighth. I give and bequeath to my grandson, Robert Sterling Clark, the sum of two hundred and fifty thousand dollars.

146 Ninth. I give and bequeath to my grandson, Ambrose Frederick Clark, the sum of two hundred and fifty thousand dollars.

Tenth. I give and bequeath to my grandson, Steven Nicholas Clark, the sum of two hundred and fifty thousand dollars.

Eleventh. I give, devise and bequeath my mansion known as Fernleigh and the lands connected therewith, including Fernleigh cottage and the lot adjacent, formerly owned by George W. Ernst or his wife, and also the lot purchased from the Bower's estate, on the easterly side of the Susquehanna river, containing together about thirty-five acres of land, more or less, situate in the village of Cooperstown and in the town of Middlefield, county of Otsego and State of New York, together with the furniture, pictures, books, and personal property of every kind which may be in and appurtenant to the said mansion, cottage, and premises last mentioned at the time of my decease, to my son, Alfred Corning Clark, for and during his life, and after his decease I give, devise, and bequeath all the premises and property described in this paragraph to my grandson, Edward Severin Clark, in fee; and it is my wish that Fernleigh and the lands appurtenant may be held and owned by my descendants as long as possible.

Twelfth. I give, devise, and bequeath to my grandson, Edward Severin Clark, all the lands of which I may be the owner at the time of my decease which front upon the westerly side of Lake Otsego, including the property known as Fennimore farm and the property known as the Doubleday farm, and other adjacent or near to said farms, together with the stock, farming implements, and other personal property which belonged thereto and may be thereon.

Thirteenth. I give, devise, and bequeath to my grandson, Robert Sterling Clark, the lands and premises known as Fernleigh farm, situate in the town of Middlefield, county of Otsego and
147 State of New York, being the same property purchased by me from Henry Frederick Phinney and wife, together with all stock, farm implements, and other personal property which may belong thereto or be thereon.

Fourteenth. I give, devise, and bequeath to my grandson, Ambrose Frederick Clark, the land and property known as the Pine Grove farm, and also the lot of land known as the "Eyrie," adjacent to said Pine Grove farm, and including Prospect Rock, situate in the town of Middlefield, county of Otsego and State of New York, together with all stock, farming implements, and other personal property which may belong thereto and be thereon.

Fifteenth. I give and devise to my grandson, Edward Severin Clark, all the city lots which I may own at the time of my decease with the buildings thereon, which are contained in the block bounded by the Eighth avenue, Seventy-second street, Ninth avenue, and Seventy-third street, in the city of New York.

Sixteenth. I give and devise to my grandson, Robert Sterling Clark, all the city lots which I may own and any interest I may have therein at the time of my decease, with the buildings thereon, which are contained in the block bounded by Seventh avenue, Fifty-fifth street, Broadway, and Fifty-sixth street, in the city of New York; also the two lots situate at the southeasterly corner of Seventh avenue and Fifty-fifth street, in the city of New York, on which is

the "Wyoming" apartment house; also the lot of land on which an apartment house is now in course of erection, situate at the southwesterly corner of Seventh avenue and Fifty-fifth street, in the city of New York.

Seventeenth. I give and devise to my grandson, Ambrose Frederick Clark, all the city lots which I may own at the time of my decease, with the buildings thereon, which are contained in the block
148 bounded by Eighth avenue, Seventy-third street, Ninth avenue, and Seventy-fourth street, in the city of New York.

Eighteenth. I give and devise to my grandson, Stephen Nicholas Clark, all the city lots which I may own at the time of my decease, with the buildings thereon, which are contained within the block bounded by Eighth avenue, Eighty-fifth street, Ninth avenue, and Eighty-sixth street, in the city of New York.

Nineteenth. I hereby order and direct that in case any building or buildings shall at the time of my decease have been actually begun on either or any of the city lots separately devised in any preceding clause of this my will, that such building or buildings shall be completed and finished according to the architect's plans therefor and under the direction of my executors herein named, and that the cost thereof shall be paid out of the general fund of my estate without charge to the particular devisee or devisees who may be benefited thereby.

Twentieth. I hereby give and bequeath to the president and trustees of Williams College, in aid of the general fund of that institution, the sum of fifty thousand dollars.

Twenty-first. I hereby request my son, Alfred Corning Clark, now a stockholder in the Singer Manufacturing Company, and who at my decease will become very largely interested in said corporation, to cause himself to be elected a director of the said company and to take such part in the management of its affairs as may be necessary to watch over and protect the interest of the family therein.

It is desirable and my wish that one of my grandsons shall be educated and prepared to succeed at the proper time to a directorship in the Singer Manufacturing Company.

Finally, I nominate and appoint my friends, James Meehan,
149 of the city of New York, and James Bunyan, of the village of Cooperstown, to be the executors of this my last will and testament.

In witness whereof I have hereunto set my hand and affixed my seal this eighteenth day of September, in the year one thousand eight hundred and eighty-two. EDWARD CLARK. [L. S.]

The said testator, Edward Clark, subscribed his name to his aforesaid last will and testament on the day of its date, and at the same time declared to us that it was his last will and testament; and we at the same time, at his request, in his presence, and in presence of each other, subscribed our names as witnesses thereto.

HENRY J. BOWERS,
Cooperstown, N. Y.
WILLIAM C. BOWERS,
Cooperstown, N. Y.

Surrogate's Court.

In the Matter of Proving the Last Will and Testament of EDWARD CLARK, Deceased.

OTSEGO COUNTY, ss:

Henry J. Bowers and William C. Bowers, being first duly sworn in open court, upon their several corporal oaths, each for himself doth depose and say that he is a subscribing witness to the last will and testament of Edward Clark, late of the town of Otsego, in the county of Otsego and State of New York, deceased; and these deponents do further say that the said Edward Clark, deceased, did, in the presence of each of these deponents, subscribe his name at the end of the instrument in writing which is now here shown to these deponents and which purports to be the last will and testament of the said deceased, and which bears date on the eighteenth day of September, one thousand eight hundred and eighty-two.

150 That the deceased did at the time of subscribing his name to the said instrument as aforesaid declare the same to be his last will and testament, and these deponents did thereupon subscribe their own respective names at the end of said instrument as attesting witnesses to the execution thereof, each at the request of the said deceased and in his presence and in the presence of each other.

That the said deceased at the time of so subscribing his name to said instrument as aforesaid and publishing said instrument as aforesaid was upwards of twenty-one years of age and a citizen of the United States; that he appeared to be, and deponents believe he was, of sound mind, memory, and understanding, and not under any restraint, and, as deponents verily believe, in all respects competent to devise real estate; that each of these deponents saw the other sign his name to said instrument in the presence of the said deceased.

HENRY J. BOWERS.
WILLIAM C. BOWERS.

Subscribed and sworn to before me this 17th day of October, A. D. 1882.

JAS. H. KEYES, *Surrogate.*

OTSEGO COUNTY, ss:

It appearing upon the proofs duly taken in respect to the last will and testament of Edward Clark, late of the town of Otsego, in the county of Otsego and State of New York, deceased, that the said will was duly executed and that the said Edward Clark at the time he executed the same was in all respects competent to devise real estate and not under restraint, the said last will and testament and

151 the proofs and examinations are hereby recorded, signed, and certified by me, pursuant to the provisions of the law made and provided, this 17th day of October, A. D. 1882.

JAS. H. KEYES, *Surrogate.*

In the Matter of the Administration of the Goods, Chattels, and Credits of EDWARD CLARK, Deceased.

The People of the State of New York to James Bunyan and James Meehan, named as executors in the last will and testament of Edward Clark, late of Cooperstown, deceased:

Whereas at the village of Cooperstown, in the county of Otsego, on the 17th day of October, in the year of our Lord one thousand eight hundred and eighty-two, before J. H. Keyes, surrogate of the said county, the last will and testament of Edward Clark, late of the said county, was proved and allowed by us;

And the said deceased having while living and at the time of his death goods, chattels, and credits within this State by means whereof and the proving and registering the said will, the granting administration of all and singular the said goods, chattels, interests, and credits, and also the auditing, allowing, and finally discharging the account hereof, doth belong to us, and you, the said James Bunyan — James Meehan, being named in said will as executors thereof, the administration of all and singular the goods, chattels, and credits of the said deceased and the execution of the powers reposed in you by said will are hereby granted to you, the said James Bunyan and James Meehan, you having first taken and subscribed on oath before the said surrogate faithfully and honestly to discharge the duties of such executors.

152 In witness whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

[L. S.] Witness J. H. Keyes, Esq., surrogate of our said county, at Cooperstown, this 17th day of October, 1882.

JAS. H. KEYES, *Surrogate.*

Recorded and examined October 17th, 1882.

JAS. H. KEYES, *Surrogate.*

STATE OF NEW YORK, } *ss:*
County of Otsego, }

I, Lee B. Crittenden, clerk to the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the last will and testament of Edward Clark, late of Cooperstown, in said county, deceased, together with the probate thereof and the letters testamentary issued on said will, with the original records thereof now remaining in this office, and have found the same to be correct transcripts therefrom and of the whole of such original records.

In testimony whereof I have hereunto set my hand and affixed the seal of office of said surrogate this 26th day of February, in the year of our Lord one thousand eight hundred and eighty-three.

LEE B. CRUTTENDEN,

[SURROGATE SEAL.] *Clerk of the Surrogate Court.*

STATE OF NEW YORK, } *ss:*
County of Otsego, }

I, James H. Keyes, surrogate of said county and presiding magis-

Surrogate's Court.

In the Matter of Proving the Last Will and Testament of EDWARD CLARK, Deceased.

OTSEGO COUNTY, *ss*:

Henry J. Bowers and William C. Bowers, being first duly sworn in open court, upon their several corporal oaths, each for himself doth depose and say that he is a subscribing witness to the last will and testament of Edward Clark, late of the town of Otsego, in the county of Otsego and State of New York, deceased; and these deponents do further say that the said Edward Clark, deceased, did, in the presence of each of these deponents, subscribe his name at the end of the instrument in writing which is now here shown to these deponents and which purports to be the last will and testament of the said deceased, and which bears date on the eighteenth day of September, one thousand eight hundred and eighty-two.

150 That the deceased did at the time of subscribing his name to the said instrument as aforesaid declare the same to be his last will and testament, and these deponents did thereupon subscribe their own respective names at the end of said instrument as attesting witnesses to the execution thereof, each at the request of the said deceased and in his presence and in the presence of each other.

That the said deceased at the time of so subscribing his name to said instrument as aforesaid and publishing said instrument as aforesaid was upwards of twenty-one years of age and a citizen of the United States; that he appeared to be, and deponents believe he was, of sound mind, memory, and understanding, and not under any restraint, and, as deponents verily believe, in all respects competent to devise real estate; that each of these deponents saw the other sign his name to said instrument in the presence of the said deceased.

HENRY J. BOWERS.
WILLIAM C. BOWERS.

Subscribed and sworn to before me this 17th day of October, A. D. 1882.

JAS. H. KEYES, *Surrogate.*

OTSEGO COUNTY, *ss*:

It appearing upon the proofs duly taken in respect to the last will and testament of Edward Clark, late of the town of Otsego, in the county of Otsego and State of New York, deceased, that the said will was duly executed and that the said Edward Clark at the time he executed the same was in all respects competent to devise real estate and not under restraint, the said last will and testament and

151 the proofs and examinations are hereby recorded, signed, and certified by me, pursuant to the provisions of the law made and provided, this 17th day of October, A. D. 1882.

JAS. H. KEYES, *Surrogate.*

In the Matter of the Administration of the Goods, Chattels, and Credits of EDWARD CLARK, Deceased.

The People of the State of New York to James Bunyan and James Meehan, named as executors in the last will and testament of Edward Clark, late of Cooperstown, deceased:

Whereas at the village of Cooperstown, in the county of Otsego, on the 17th day of October, in the year of our Lord one thousand eight hundred and eighty-two, before J. H. Keyes, surrogate of the said county, the last will and testament of Edward Clark, late of the said county, was proved and allowed by us;

And the said deceased having while living and at the time of his death goods, chattels, and credits within this State by means whereof and the proving and registering the said will, the granting administration of all and singular the said goods, chattels, interests, and credits, and also the auditing, allowing, and finally discharging the account hereof, doth belong to us, and you, the said James Bunyan — James Meehan, being named in said will as executors thereof, the administration of all and singular the goods, chattels, and credits of the said deceased and the execution of the powers reposed in you by said will are hereby granted to you, the said James Bunyan and James Meehan, you having first taken and subscribed on oath before the said surrogate faithfully and honestly to discharge the duties of such executors.

152 In witness whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

[L. S.] Witness J. H. Keyes, Esq., surrogate of our said county, at Cooperstown, this 17th day of October, 1882.

JAS. H. KEYES, *Surrogate.*

Recorded and examined October 17th, 1882.

JAS. H. KEYES, *Surrogate.*

STATE OF NEW YORK, *County of Otsego,* } ss:

I, Lee B. Crittenden, clerk to the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the last will and testament of Edward Clark, late of Cooperstown, in said county, deceased, together with the probate thereof and the letters testamentary issued on said will, with the original records thereof now remaining in this office, and have found the same to be correct transcripts therefrom and of the whole of such original records.

In testimony whereof I have hereunto set my hand and affixed the seal of office of said surrogate this 26th day of February, in the year of our Lord one thousand eight hundred and eighty-three.

LEE B. CRUTTENDEN,

[SURROGATE SEAL.] *Clerk of the Surrogate Court.*

STATE OF NEW YORK, *County of Otsego,* } ss:

I, James H. Keyes, surrogate of said county and presiding magis-

trate of the surrogate's court, do hereby certify that the fore-
153 going exemplification of the last will and testament of Edward Clark, deceased, together with the probate thereof and the letters testamentary issued thereon, is authenticated in due form and by the proper officer and in such form and manner that it would be received in evidence in any of the courts in this State.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court this 26th day of February, A. D. 1883.

[SURROGATE SEAL.] JAS. H. KEYES, *Surrogate.*

At a term of the appellate court begun and held at Chicago on Tuesday, the seventh day of March, in the year of our Lord one thousand eight hundred and eighty-two, within and for the first district of the State of Illinois.

Present: The Honorable Isaac G. Wilson, presiding judge; the Honorable Joseph M. Bailey, justice; the Honorable Wm. K. McAllister, justice.

MONDAY, *April* 10, *A. D.* 1882.

MICHAEL GROMLEY *vs.* JOHN L. DAY. } No. 1176. Appeal Cook Superior.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that that record is no error, therefore it is considered by the court
154 that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things assigned for error; and it is further considered by the court that the said John L. Day, appellee, recover of and from the said Michael Gormley, appellant, his costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Eli Smith, clerk of the appellate court of the first district of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order of the said appellate court in the above-entitled cause, of record in my office.

In testimony whereof I have set my hand and affixed
[SEAL.] the seal of the said appellate court, at Chicago, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

ELI SMITH,
Clerk of the Appellate Court of the First District.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Isaac G. Wilson, chief and presiding justice of the appellate court of the first district of the State of Illinois, do hereby certify that the foregoing certified copy of the final order of the appellate court of the first district of Illinois in the case of Michael Gormley, appellant, *vs.* John L. Day, appellee, is authenticated in due form and by the proper officer and in such form and manner that it would be received in evidence in any of the courts in this State.

In testimony whereof I have hereunto set my hand and
155 affixed the seal of said court this 24th day of September, 1884.

[SEAL.] ISAAC G. WILSON,
Chief and Presiding Justice of the Appellate Court of the First District of Illinois.

Testimony of JOHN L. DAY, a witness on behalf of the complainant, —, being duly sworn, was examined in chief by Mr. POPE the 22nd day of October, A. D. 1884, before Henry W. Bishop, master in chancery of said court.

Int. 1. Please state your name, age, residence, and occupation.

A. John L. Day; age, thirty-five; residence, Glencoe; occupation, abstract maker.

Q. Have you had any connection with the village of Glencoe, any official connection?

A. Im a clerk.

Q. How long have you been clerk of said village?

A. For the past four years.

Q. Did you ever see that paper before (handing witness paper)?

A. Yes, sir.

Q. Have you a copy of the records with you?

A. Yes.

Q. Will you turn, please, to the records of the village shortly prior to the 7th day of October, 1881?

A. Witness turns to page indicated.

—. Is there any ordinance there for the vacation or claiming to vacate any portion of Adams avenue?

Objected to because the evidence is not competent in this case.

A. Yes, sir.

Q. Is this the ordinance on pages 280–'1 of said records?

Same objection.

156 A. Yes; on page 280 there is an ordinance for the vacation of Adams avenue.

Mr. POPE: I would like to offer that in evidence.

Objected to for the reason that what has been offered in evidence has not been shown to be competent for evidence in this case.

Counsel for complainant offers in evidence so much of the records

as shows the date of the meeting and the proceedings, who were present and who absent, and the proceedings of said meeting relative to the vacation of Adams avenue between Grove and Bluff streets.

Same objection.

Complainant's solicitor asks that copy of the records showing such proceedings and such vacation be attached to the deposition of witness, which is accordingly done, and marked "Day Exhibit A."

Q. Did Mr. Gormley at that meeting present any petition for the vacation of that street?

A. Yes.

Q. Michael Gormley, one of the defendants in this case?

A. Yes.

Q. Was that ordinance posted by you?

A. Yes.

Q. In what way?

A. By affixing three copies of said ordinance on the front of the most public places in the village.

Q. In the usual way provided?

A. By the charter of the village.

157 Q. Did Mr. Gormley make any representations at that meeting as to ownership of the land—what representations did he make, if any?

A. I think his petition was all that was brought before the council at that time. I don't recollect any discussion in the matter.

Q. Anything said as to ownership at that time?

Objected to because the place is not fixed.

Q. Anything said as to the land bordering on said Adams avenue?

Objected to because there is neither time, place, or persons fixed.

A. I do not think so.

Q. Will you turn to the records of the village of Glencoe of January 3, 1882, and state if the records show the vacation of any street or streets in Gormley's Addition to Glencoe, Cook county, Illinois?

A. The records of January 3, 1882, show the passage of an ordinance for the vacation of streets and parts of streets in Gormley's Addition to Glencoe.

Q. What page?

A. The ordinance is shown on page 4.

Complainant's solicitor offers in evidence so much of the records as shows the date of the meeting and those who were present or absent, and also so much of the records as shows the passage of the ordinance and everything relating thereto.

Objected to.

A copy of said record is attached hereto, marked "Day Exhibit B."

Objected to on the ground that the evidence is neither competent nor relevant.

Q. Was Michael Gormley present at the meeting of trustees of Jan'y 3, 1882?

158 Objected to because there are no such persons in the village of Glencoe.

A. Yes, sir.

Q. Did he state anything at that time; and, if so, what?

A. I could not recall Mr. Gromley's language, but it gave the impression——

Q. Give the substance of it.

A. In response to the inquiry from the president that he was the owner of the property through which the streets sought to be vacated passed.

Q. What was the substance of his conversation?

A. That he was the owner of the property through which the streets sought to be vacated passed.

Q. Was that ordinance ever posted by you?

A. No, sir.

Q. State what Michael Gormley said to you in regard to the ordinance, if anything.

Objected to as incompetent.

A. Mr. Gormley had no reason——

Q. Tell me what he said as to posting or otherwise.

A. He desired me to post the ordinance, and I stated that I should take the full time that the village ordinance in relation to ordinances allowed them, and he wished to know whether I would ever post it, and I said I didn't know — I ever would.

Q. Turn to the records of Jan'y 12, 1882, of the council of Glencoe, and state what is shown thereon in regard to the last ordinance, if anything.

Objected to because the book is the best evidence.

—. State what appears there, if there is anything, in regard to it.

159 A. That the ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe was reconsidered and referred to the committee on judiciary for investigation.

Mr. POPE: We offer in evidence all proceedings of that meeting showing the date what members of the counsel were present or absent, and any and all proceedings relating to the rescinding of the ordinance of January 3, 1882, which the master will please make a copy of and attach as "Exhibit C" to the testimony of this witness.

Objected to because the evidence offered is not competent or relevant and is not definite, leaving it to the discrimination of the master as to what he shall put in.

Q. Turn to the records of January 24, 1882, and state if there is any reference to the ordinance of January 3, 1882.

A. The meeting of Jan'y 24, 1882, shows the reconsideration, and that the ordinance for vacating certain streets in Gormley's Addition to Glencoe was rescinded.

Objected to because the book is the best evidence of what it shows, and the book that is offered in evidence is not competent evidence.

Mr. POPE: We offer so much of the record as shows the date of the meeting, the presence or absence of members of the council, and also any and all proceedings relating to rescinding any ordinance for vacation of streets in Gormley's Addition to Glencoe, which the master will please make a copy of and attach to this deposition, marked "Day Exhibit D."

Objected to as incompetent and improper.

Q. Turn to the records of February 7, 1882, and state whether there is any reference to street or alleys in Gormley's Addition
160 to the village of Glencoe.

A. The meeting of February 7, 1882, shows the passage of an ordinance rescinding all ordinances heretofore passed by the council of the village of Glencoe vacating any streets or parts of streets in Gormley's Addition to Glencoe, or purporting so to do.

Mr. POPE: I now offer in evidence all of the records of February 7, 1882, showing meeting of the council, showing members of the council present or absent, and any and all proceedings relating to the rescinding of any ordinance relating to Gormley's Addition to Glencoe.

Objected to as before.

Q. Was this last ordinance posted by you?
A. Yes.
Q. In what manner?
A. In the usual manner of posting ordinances by affixing a copy thereof — the most public places in the village of Glencoe.
Q. Was there any publication in any newspaper?
A. No, sir.
Q. Just posted?
A. Just posted.
Q. When did you have this conversation with Michael Gormley that you have spoken of relating to the passage of the second ordinance that was passed?
A. The second ordinance? Very shortly after its passage; either the first or the second morning after, I should think. I cannot very closely recollect, but it was very shortly after its passage.
Q. At what place?
A. On the premises of the Northwestern railway in the village of Glencoe.

Q. Did you have any subsequent conversation with him
161 in regard to it?

A. Mr. Gormley came to my residence and tendered me my fees and asked me for a copy of the ordinance, which I refused to give, and I stated that I would take more advice on the subject and let him know in regard to the matter.

Q. Did you have any other conversations with him in regard to it, that you recollect?

A. No, sir; I don't recollect any subsequent conversation.

Q. Did you receive the money which he tendered to you at that time?

A. No, sir.

Q. What did you do with it?

A. I returned it.

Q. That is, did you take it at all?

A. No, sir; I refused to take it; told Mr. Gormley that when I had settled the matter as to whether I would give him a copy or not that would be the time for the money.

Q. Did you give him a copy?

A. No, sir.

Q. Did any one by your orders ever give him a copy?

A. No, sir.

Q. Or by your instruction?

A. No, sir; I had nothing to do with Gormley obtaining a copy.

Q. Did you know of his obtaining a copy?

A. I know that he had a copy.

Q. Did you see him get it?

A. No, sir.

Q. When you speak of his obtaining a copy do you mean a certified copy?

A. Simply a copy.

Q. Without being certified?

162 A. Without being certified to.

Mr. CULVER: That is, you mean the second ordinance?

A. Yes.

Q. Were you present in the trial of the suit of Gormley *vs.* Day, in the superior court of Cook county—Cook county, Illinois—before Judge Gary?

A. During part of the time of the trial of the case.

Q. Was there any evidence given in that case?

A. Yes.

Q. What kind?

A. Evidence both for and against.

Q. Oral or documentary?

A. There were papers produced, but what papers I could not recollect.

Q. Was there any oral evidence ever heard?

A. Yes.

Defendants' counsel moves to strike out the evidence just given because there is no time or place fixed.

Q. When you speak of trial what trial do you refer to?

A. The trial of the suit of Michael Gormley *vs.* John L. Day, clerk of the village of *the* Glencoe, in the superior court of Cook county, Illinois.

Q. Do you know what kind of a suit that was?

A. It was to compel the defendant to post an ordinance and supply the complainant with a copy of the same.
Q. That is the suit you refer to?
A. Yes.
Q. When you speak of trial what do you refer to—the final trial of the case?
A. Yes.

Objected to for the same reason, and motion made to strike out the evidence.

163 Q. Were you a candidate for election the last time the members of the common council and clerk of the village of Glencoe were elected?
A. The clerk is appointed by the council.
Q. Were you present when the council were elected?
A. Yes.
Q. Do you know whether anything was said at that time in relation to this business of vacating streets in Gormley's Addition during the time of the election?

Objected to because there is no time or place fixed.

A. Nothing but third or fourth hand common gossip.
Q. Reports at that time?
A. Yes.
Q. When?
A. A short time prior to the last election.
Q. When was the last election?
A. The first Tuesday in April of this present year, 1884.
Q. You may state what these reports and rumors were.

Objected to as incompetent and irrelevant.

A. To the effect that if the council running on the opposition ticket would get a majority and was elected it would result in the passage of an ordinance similar to the one that is now passed vacating streets or parts of streets in the village of Glencoe.
Q. Do you know who supported the opposition ticket you speak of—that is, whether Michael Gormley or Mr. Culver supported that ticket?

Objected to because if he has knowledge as to how persons vote it is a criminal offence for him to answer, as he was clerk of the village of Glencoe; if it is common talk it is not competent.

164 Complainant's solicitor states to the witness that he does not wish him to divulge anything obtained from ballots actually cast in the village of Glencoe, but refers to the talk, &c., before the election and at the time of the election in regard to the issues thereof.

A. I could not recollect what names were on the opposition ticket, but it was understood that Culver and Gormley were at the back of the ticket.

Q. Were they working at that time, do you know; did you see them present at the polls?

A. I do not think they were present at the polls, but I don't know.

Q. What influence, if any, did that have upon the election, in your judgement?

Objected to as incompetent and irrelevant.

A. It insured a heavier poll of votes to defeat the opposition ticket than would otherwise have been called out.

Q. Were arguments of the character you have mentioned referring to the vacation of any streets in Gormley's Addition used at the last election?

Objected to as no time or place is fixed.

A. Only to those who were known to be opposed to Gormley and Culver.

Q. Were they used?

A. Yes; they were used.

Q. You are the keeper of the records of the village of Glencoe?

A. I am.

Q. In regard to the second ordinance that has been mentioned, namely, that of January 3, 1882, did you ever see a copy posted in the village?

A. Yes.

Q. Where was it?

A. Posted on the village bulletin board of the Northwestern Railway Company's premises.

165 Q. Was it a certified copy?

A. Certainly not by the village clerk.

Q. Nor under the seal of the village by any officer of the village?

A. No, sir; it was not certified by any officer of the village.

Q. Did you have anything to do with posting that notice?

A. No, sir; I did not.

Q. Was it ever posted by your instructions?

A. It was not.

Q. Or with your knowledge or consent?

A. It was not with my knowledge or consent.

Cross-examination by Mr. CULVER:

Q. Mr. Day, at the time when you say that Michael Gormley made representations that he was the owner of property on the streets proposed to be vacated, where was it that he made such a representation?

A. It was in the council chamber, and it was a short time prior to the passage of the ordinance.

Q. Was the council in session at that time?

A. Yes.

Q. To whom, if to any person, did he make the remark?

A. To the president of the council, Augustus H. Hovey.

Q. What did he say?

A. I have before stated, Mr. Culver, that I could not recollect his exact language, but it was such as to convey the impression that he was the owner of the property.

Q. Of what property?

A. It would be the presumption, I received that impression, that he was the owner of the property through which the streets passed.

Q. Did he say so?

A. That is my impression.

Q. Did Mr. Hovey say anything to him at that meeting?

166 A. My impression is that he asked him whether he was the owner of property through which the streets passed.

Q. Did he say through which the streets passed, or simply was he the owner of property, if you remember?

A. I do not remember. I have but a general impression of the conversation.

Q. Who else was present at that conversation, if any one?

A. Several members of the council; I think all but one.

Q. Isn't it a fact that evening that you went after Francis B. Law, one of the members of the council, and pressed him to come over to the meeting?

A. I have not the slightest recollection of doing so; I might have done so.

Q. Was there any petition at all presented for the passage of the second ordinance?

A. I believe not, sir.

Q. You say there was a petition presented for the vacation of Adams avenue between Grove and Bluff St.—the first ordinance. State if you have that petition with you.

A. The substance of it is spread on the records.

Q. I didn't ask you for the substance of it. I asked you for the petition. Have you it under your control and are you willing to make a certified copy?

A. Yes; there is a certified copy here.

Q. Will you please read it?

A. Witness reads:

"To the president and council of the village of Glencoe:

The undersigned would respectfully ask that you vacate Adams avenue between Grove street and Bluff street, in Gormley's Addition to Glencoe.

Signed M. GORMLEY."

167 Q. When you say it was common talk that Culver and Gormley, if successful, would pass the ordinance or have the ordinance passed for the vacation of streets in Gormley's Addition to Glencoe, what Culver do you mean?

A. Morton Culver.

Q. Did you ever hear Morton Culver in your life say that he would vote or ask any one to vote for the vacation of certain streets in Gormley's Addition to Glencoe?

A. No, sir.

Q. Haven't you, on the contrary, heard him say that he didn't approve of it, and that if he had been in the council he would have voted "no?"

A. I cannot recollect.

Q. Did you hear Morton Culver, in any election talk during or prior to the last election for the members of the village council, say that he was in favor of the council or wanted to be a member of the council, so as to have the ordinance passed to vacate streets in Gormley's Addition to Glencoe?

A. No, sir; I did not.

Q. Did you ever hear Michael Gormley say so?

A. No, sir.

Q. But isn't it a fact that the people from whom you did hear that were people opposed to what you call the opposition ticket?

A. Yes.

Q. Isn't it a fact that they used it for electioneering purposes to promote the election of members of the council who were on the other ticket?

A. Undoubtedly so.

Q. And is it not a fact that Michael Gormley on that election day was judge of elections at Winnetka and was not at the polls?

168 A. My impression is he was running for justice of the peace and was electioneering at the other polls.

Q. Where was the polling place for members of the council of the village of Glencoe at the last election?

A. The railway depot in the village of Glencoe.

Q. How far from the village of Winnetka?

A. Two and a half miles.

Q. Do you know whether these copies of the ordinance which you saw posted, being printed copies of the second ordinance, so called, were true copies of the ordinance as you have it in your books?

A. No, sir; I do not know it.

Q. Will you swear they are not true copies?

A. I have no knowledge of its being a true copy; it had the appearance of being a copy of that ordinance, with other matters that took place at that meeting; it had the appearance of being a copy of the proceedings of the council of that evening.

Q. Of that meeting?

A. Of that meeting.

Q. Was there not an affidavit or what purported to be one attached to these copies that the foregoing was a true copy of the proceedings of the meeting at which this so-called second ordinance was passed?

A. Now you recall it, I have an impression that there was, but I could not state that there was or was not.

Q. If you have an impression, what is your impression as to who signed that affidavit?

A. My impression is that it was signed by Michael Gormley.

Q. Have you an impression before whom it was sworn to?

A. Not the slightest.

169 Q. Have you any impression it was sworn to before Morton Culver, notary public, of that county, with his seal attached?

A. I have no knowledge that it was or was not.

Q. How many did you see posted?

A. I recollect but the one.

Q. They were posted within thirty days after the passage of the ordinance—do you remember?

A. My impression is it was very closely bordering on the end of the thirty days.

Q. Didn't you yourself in electioneering against what was called the opposition ticket tell if the opposition ticket was elected there was a liability of the ordinance being passed vacating streets in Gormley's Addition to Glencoe?

A. Yes. I would state there would be a liability of such a thing taking place.

Q. Did you not use it as an electioneering argument against the opposition ticket?

A. Yes.

Q. And yet you state you never heard Gormley or Culver state that they wanted a council for that purpose, or if elected council would vote that way?

A. Undoubtedly.

Q. On what basis do you ground your opinion?

A. On just as good grounds as I would that if I spilt ink it would make a black stain.

Q. You have stated all your means of information on the subject?

A. Yes.

Q. Can you state from recollection whether Francis B. Law was present at the meeting at which this so-called second ordi-
170 nance was passed, and present at the time Michael Gormley made the statement as you have made about the ownership of the property?

A. Yes.

Q. Was A. W. Fletcher present at that meeting?

A. Mr. Fletcher was present, I believe.

Q. You may state the exact language that either Hovey or Gormley used—can you?

A. No, sir.

Q. Or you can give us your impression.

A. That is all I recollect.

Redirect examination:

Mr. POPE. Can you state the substance of what was said?

A. Nothing more than the impression conveyed to my mind at this time.

Q. Can you state without giving the words—can you state the substance of what was said?

A. The substance was to the effect that Gormley was the owner

of the property through which the streets passed; that is my impression.

Q. That is your best recollection?

A. That is my best recollection.

Q. Mr. Culver has asked you as to your using arguments for the election of a certain ticket. Will you state what your reasons were for using those arguments and why you so stated them?

A. Mr. Gormley had procured the passage of an ordinance for the vacation of these streets. He had tried very hard to prevent the reconsideration and annullment of that ordinance. He had tried to compel the village clerk to furnish him with a certified copy of the ordinance, to have it posted, and had been to a great deal of
171 expense in courts of law for that purpose, and it is a natural presumption that had he the power he would proceed to fulfill his desires in that direction.

Q. Do you know whether the opposition board were acquainted with Michael Gormley?

Objected to because there is no evidence that there was any opposition board.

A. The opposition ticket was composed of the friends of Gormley and Culver.

Q. How do you know that?

A. Common report.

Q. Do you know whether they were acquainted with Culver and Gormley?

A. They were, undoubtedly.

Q. Do you know whether the candidates for election to the present board at the election held in the village of Glencoe last past were friends of Michael Gormley and Morton Culver?

Objected to, as he has already stated he does not know who the persons were who were running on the opposition ticket, and because it is immaterial and irrelevant.

A. They were so reputed.

Q. When did you post the rescinding ordinance of February 7, 1882?

Objected to because the date is not fixed.

A. On February 11, 1882.

Q. Did you post a rescinding ordinance of vacation?

A. January 12th there was merely a resolution.

Q. Was the so-called ordinance of January 24, 1882, posted by you?

A. There was no ordinance passed on January 24th merely a motion that the said ordinance be reconsidered and annulled.

Q. That is what has been spoken of as the ordinance of
172 January 24, 1882.

A. There is no ordinance on January 24th; nothing but a motion.

"DAY EXHIBIT A."

GLENCOE, *October* 4, 1881.

Regular meeting of the council at 7.30 p. m.
Present: C. Fletcher, Law, Sherwood, and the president, Hovey.
Absent: C. Dennis, Fehd.

* * * * * * *

Michael Gormley presented a petition praying that Adams avenue between Grove and Bluff Sts. be vacated.

C. Fletcher moved that the prayer be granted, and presented the below given ordinance and moved its adoption to carry said petition into effect.

The motion was carried and the ordinance adopted by the following vote:

Ayes—C. Fletcher, Law, and Sherwood (3).
Noes—None.

Said ordinance is as follows:

Be it ordained by the council of the village of Glencoe—

SECTION 1. That Adams avenue between Grove street and Bluff street, in Gormley's Addition to Glencoe as recorded March 11th, 1874, in Book 7 of Plats, page 36, be, and the same is hereby, vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

Posted Oct. 7.

(Vol. 3, page 4, Records of Clerk of Village of Glencoe.)

173 "DAY EXHIBIT B."

JANUARY 3RD, 1882.

Regular meeting of the council at 7.30 p. m.
Present: C. Fletcher, Law, Sherwood, and the president, Hovey.
Absent: C. Dennis & Fehd.

* * * * * * *

C. Dennis came in.

C. Law read the following ordinance and moved its adoption—motion carried by the following vote: Ayes, C. Dennis, Fletcher, Law and Sherwood; noes, none—

An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

Be it ordained by the council of the village of Glencoe—

SECTION 1. That the following streets and parts of streets as laid out on a plat entitled Gormley's Addition to Glencoe, being a subdivision of the S. W. ¼ of section 7 and the W. ½ of the N. E. ¼ of the N. W. ¼ of section 18, being all in township 42, range 13, in Cook county and State of Illinois, and filed for record in the recorder's

office of Cook county and State of Illinois March 11th, 1874, in Book 7 of Plats, page 36—

1. Washington avenue between Grove street and Bluff street and Washington avenue between Valley street and Prairie street.
2. Adams avenue between Valley street and Prairie street.
3. Jefferson *street* avenue.
4. Madison avenue.
5. Monroe avenue.
6. Jackson avenue.
7. Bluff street between Adams avenue and Jackson avenue.
8. Valley street between Adams avenue and Jackson avenue.
9. Wood street between South avenue and Jackson avenue.

174 10. Prairie street between South avenue and Jackson avenue—be, and the same is hereby, vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

(Vol. 3, page 5, Records of Clerk of Village of Glencoe.)

"DAY EXHIBIT C."

JAN'Y 12, 1882.

Special meeting on call, signed by C. J. F. Dennis, Frank P. Law, & P. N. Sherwood and the president, Hovey, for the purpose of taking such action as should be deemed advisable concerning the reconsideration of an ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

Present: C. Dennis, Fehd, and the president, Hovey.

* * * * * * *

C. Dennis moved that the vote of last meeting for the adoption of ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe be reconsidered; carried; ayes, C. Dennis, Fehd, and the president; no, C. Fletcher.

C. Dennis moved that said vote be annulled, and that the ordinance referred to be referred to the comm'ee on judiciary to investigate; carried.

Ayes—C. Dennis, Fehd, and the president; noe, C. Fletcher.

* * * * * * *

C. Sherwood here came in. The clerk read the call, and, on motion of C. Dennis, the action of the council prior to his arrival was endorsed by C. Sherwood.

(Vol. 3, pgs. 5 & 6, Records of Clerk of Village of Glencoe.)

"DAY EXHIBIT D."

"GLENCOE, *January 24th*, 1882.

"Special meeting of the council at 7.30 p. m.

"Present: C. Fehd, Fletcher, Sherwood, and the president, Hovey

175 "Absent: C. Dennis and Law.

* * * * * * *

"C. Dennis here came in.

* * * * * * *

"C. Dennis moved, and C. Sherwood seconded the motion, that the vote and action had at the last regular meeting to vacate certain streets in Gormley's Addition to Glencoe be reconsidered and annulled. Carried.

"Ayes—C. Dennis, Fehd, and Sherwood.

"Nay—C. Fletcher."

(Vol. 3, page 6, Records of Clerk of Village of Glencoe.)

DAY EXHIBIT E.

GLENCOE, *February 7th*, 1882.

"Regular meeting of the council at 7.30 p. m.

"Present: C. Dennis, Fehd, Fletcher, and Sherwood and the president, Hovey.

"Absent: C. Law.

* * * * * * *

"The following ordinance was then presented and read:

"Be it ordained by the council of the village of Glencoe, That any and all ordinances heretofore passed by this council vacating any streets or parts of streets in Gormley's Addition to Glencoe or purporting so to do are hereby repealed, and all streets and parts of streets shown in the first and original recorded plat of said addition are hereby declared to be public streets.

"C. Fletcher moved to refer same to comm. on streets and alleys. Lost.

"Ayes—C. Fletcher (1).

"Nays—C. Dennis, Fehd, and Sherwood.

"C. Sherwood moved that the ordinance be adopted. Carried.

"Ayes—C. Dennis, Fehd, & Sherwood (3).

"Nays—C. Fletcher (1)." [SEAL.]

176 An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

Be it ordained by the council of the viilage of Glencoe—

SECTION 1. That the following streets and parts of streets, as laid out in a plat entitled Gormley's Addition to Glencoe, being a subdivision of the southwest quarter of section seven and the west half of the northeast quarter of the northwest quarter of section eighteen, being all in township forty-two, range thirteen, in Cook county and State of Illinois, and filed for record in the recorder's office of Cook county and State of Illinois March 11th, 1874, in Book seven of Plats, page thirty-six—

1. Washington avenue, between Grove street and Bluff street, and Washington avenue between Valley street and Prairie St.

2. Adams avenue between Valley street and Prairie street.

3. Jefferson avenue.

4. Madison avenue.
5. Monroe avenue.
6. Jackson avenue.
7. Bluff street between Adams avenue and Jackson avenue.
8. Valley street between Adams avenue and Jackson avenue.
9. Wood street between South avenue and Jackson avenue.
10. Prairie street between South avenue and Jackson avenue—be, and the same is hereby, vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

Day Ex. G.

177 Testimony taken before Henry W. Bishop, master in chancery of said court, the 22d day of October, A. D. 1884.

Present: Mr. Pope, for complainant; Mr. Culver, for some of the def'ts.

MICHAEL GORMLEY, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. POPE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
A. Michael Gormley.
Q. Have you been served with a subpœna in this case?
A. Yes; yesterday.
Q. By the United States marshal?
A. I don't know who he was; somebody came there.
Q. Have you with you the documents referred to in the subpœna?
A. I have not got all of them; I have got two.
Q. Will you produce them? (Witness produces papers.) I find here a deed dated 4th day of May, 1861, from Marcus Gormley and Mary Gormley, his wife, to Michael Gormley, and also a plat marked Gormley's Addition to Glencoe. Are these all the documents referred to in the subpœna that you have?
A. Yes.
Q. Do you know where the patent conveying the land of what is known now as Gormley's Addition to Glencoe now is?
A. No, sir; I do not.
Q. Have you ever seen it?
A. I presume I have seen it; I suppose it was a paper belonging to my father, Marcus Gormley, and if I ever had it from him I returned it to him.
Q. Is he now dead?
178 A. Yes; last spring about three weeks before the commencement of this suit.
Q. Who has the papers of Marcus Gormley?
A. I don't know as anybody has.
Q. He lived with you up to the time of his death. Where was he when he died?
A. In the house where I live.
Q. Has anybody else had charge of his papers except you since his death?

A. I never had charge of any papers; I have never seen any. The women folks took care of the old man. He was something over ninety years of age, and he used to set fire and burn them. There was Randall had the most to do with him, or, at least, I got her to come a couple of times.

Q. What has become of any papers or documents that he had? Are they with the ladies in your household there?

A. I don't know, sir; I never saw any.

Q. You have no idea?

A. No, sir.

Q. Is your mother living?

A. No, sir; she is dead.

Q. Do you know of any person who would be likely to know where the patent from the Government of the United States conveying the land portion of which is known as Gormley's Addition to Glencoe, Cook county, Illinois, is?

A. No; I do not.

Q. And you can give no information upon the subject?

A. No, sir.

Q. Do you know of or can you state who has the original patent by the United States to Marcus Gormley, dated March 20,
179 1843, for the southwest quarter-section 7, in fractional township 42 north, range 13, the land subject to sale in Chicago, Illinois, containing $156\frac{39}{100}$ acres?

A. I have answered the question that I don't know.

Q. Is this deed which I now hand you from Marcus Gormley and wife to Michael Gormley?

A. That is the deed.

Complainant's solicitor offers this deed in evidence, which the commissioner will please mark "Gormley, Exhibit A."

Q. Is this document which I now show you a subdivision of the S. W. $\frac{1}{4}$ of sec. 7, and the W. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 18, being all in township 42 north, range 13 E., of 3d p. m.?

Objected to because it shows on the plat what it is.

A. That is all the plat I ever had.

Q. Did you file this for record in the office of the recorder of deeds of Cook county?

A. I don't know; I don't remember.

Q. Was it filed by your direction?

A. Yes; but I don't know whether I done it.

Q. By your direction, if filed?

A. Yes.

Complainant's solicitor offers the plat in evidence and asks to have it marked "Gormley, Exhibit "B."

Objected to on the ground that it in nowisecomplies with the laws of Illinois, and refers to the statute for specific objections.

Defendant's solicitor moves to strike out the plat on the following grounds:

1. It is not signed by Michael Gormley or wife.

2. There is no release or waiver of homestead or dower right.
180 3. Because the certificate of the surveyor is insufficient.
4. Because it does not appear that this land has ever been staked, as required by law.
5. Because there are no dimensions stated on this supposed plat; next, because there are no streets shown, nor width of any streets, nor alleys, nor width of any alley, no size of any lines, and no bearings for any of the lines marked on it, and other objections referred to in the statute.

Mr. POPE: Mr. Gormley, did you on the 6th day of March, 1874, appear before J. Charles Haines, justice of the peace in and for the county of South Chicago, in Cook county, Illinois, and acknowledge that plat?

Objected because there is no such officer known at law.

A. Yes; I signed it. I don't know whether it was that date.
Q. You appeared before Mr. Haines at that date?
A. I don't know whether it was that date; I presume so.

Mr. CULVER: Did you employ Alexander Wolcott, county surveyor, to make this plat?
A. Yes; it was made by him.
Q. By your orders and directions?
A. Yes; I suppose so to make a plat of it—to make a subdivision of it.

Mr. POPE: Mr. Gormley, did you take and file in the recorder's office of Cook county, Illinois, a copy of the ordinance vacating Adams avenue, between Grove St. and Bluff St., in Gormley's Addition to Glencoe?
A. I think I did.
Q. And you recorded the same in the recorder's office of Cook county, Illinois?
A. Yes; I think so.

181 Mr. POPE: Certified copy of the record now offered in evidence, which is hereto attached, marked "Gormley Exhibit C."

Q. Mr. Gormley, did you make a copy of the ordinance of January 3, 1882, passed at a meeting of the council of the village of Glencoe, vacating certain streets and parts of streets as laid out on the plat of Gormley's Addition to Glencoe?
A. Well, I tried to make a copy of it. I went to the records and wrote some off, and I don't know whether that was the one that was posted or not.
Q. Did you post that copy or did any one by your directions post that copy?
A. I posted it.
Q. In the village of Glencoe?
A. Yes; I posted three copies.
Q. Did you afterwards take one of those copies made by you and

attach an affidavit by you as to posting, and file the same in the office of the recorder of deeds of Cook county, Illinois?

A. Yes.

Q. Did you file the ordinance vacating Adams avenue between Grove and Bluff streets, in Gormley's Addition to Glencoe, in the recorder's office of Cook county, Illinois, on or about the 17th day of October, 1881?

A. Well, I filed it there. I don't know whether that was the date or not.

Q. To the best of your recollection, that is the date?

A. Some time about that time.

Q. Did you file in the recorder's office of Cook county, Illinois, a copy made by you of the ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe on or about the 24th day of January, 1882?

182 A. Yes; that with other things was recorded—the proceedings of that meeting.

Mr. POPE: I offer certified copy of the record in evidence, which is hereto attached, marked "Gormley Exhibit D."

Q. The documents which you filed on or about the 24th day of January, 1882, contain an affidavit by you as to posting?

A. Yes; I think it did; I filed it all together.

Q. Were there any letters of administration ever taken out on the estate of your father?

A. No, sir.

Q. Did your mother die after or before him?

A. Three or four years before him.

Mr. POPE: I offer in evidence a deed of trust by Morton Culver and Eugenia M., his wife, and Michael Gormley and wife to Adolph Loeb, recorded on the 18th day of May, A. D. 1887, Book 758 of Records, page 232, in the recorder's office of Cook county, Illinois.

Objected to the introduction of this paper because it has been mutilated and is not the paper that was signed by Michael Gormley and wife and Morton Culver and wife.

Mr. POPE: I now offer a trustee's deed by Adolf Loeb to Edward Clark, recorded March 26, 1879, in book 814, page 362; also recorded March 31, 1884, book 440, page 551, recorder's office, Cook county, Illinois.

Objected to because no such property is described in the deed; also on the ground that it has been mutilated and additions made to it.

Mr. POPE: Also a trustee's deed by Adolf Loeb to Sarah J. Condon, recorded September 29, 1879, Book 945 — Records, page 155; also recorded September 22, 1879, in — 931 of Records, page 372;

183 March 31, A. D. 1884, in Book 1470 of Records, page 171.

Objected to because there is no such property described in the deed and because the paper offered in evidence has been added to since, as appears on its face.

Mr. POPE: Also a trustee's deed by Adolf Loeb to Sara J. Condon, Sept. 29, 1878, Book 938 of Records, page 86; also — 938 of Records, page 58, and also March 31, 1884, in Book 470 of Records, page 167.

Objected to for the same reason.

Mr. POPE: I also offer a quitclaim deed by Sara J. Condon, single woman, to Alfred Corning Clark, block No. 3 and other property, Gormley's Addition to Glencoe, recorded March 31, 1884, in Book 1378 of Records, page 290.

Objected — for the same reasons.

Adjourned to 11 o'clock a. m. Oct. 23d.

"GORMLEY EX. A."

Warranty Deed from Marcus Gormley & Wife to Michael Gormley.

STATE OF ILLINOIS, }
Cook County. }

No. 45326.

This instrument was filed for record on the fifth day of June, A. D. 1861, and duly recorded in Book 214 of Deeds, at page 340.

WM. L. CHURCH,
Clerk of Circuit Court and ex Offiio Recorder.

(Warranty deed. Chicago Democratic print, 45 La Salle street.)

This indenture, made this fourth day of May, in the year 184 of our Lord one thousand eight hundred and sixty-one, between Marcus Gormley and Mary Gormley, his wife, of the town of New Trier, Cook county, and State of Illinois, party of the first part, and Michael Gormley, of the same town, county, and State aforesaid, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said part- of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said part- of the second part and to his heirs and assigns forever all the following-described lot, piece, or parcel of land, situate in the county of Cook and State of Illinois and known and described as follows, to wit: The southwest quarter of section seven, in fractional township forty-two (42) north, range thirteen (13) east, of the third principal meridian, containing one hundred and sixty acres, more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever

of the said part- of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

185 And the said Marcus Gormley and Mary, his wife, part- of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of ensealing and delivering of these presents they are well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law in fee simple, and ha- good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above-bargained premises in the quiet, peaceable possession of the said part- of the second part, — heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said part- of the first part shall and will warrant and forever defend.

In witness whereof the said part- of the first part hereunto set their hands and seals the day and year first above written.

his
MARCUS x GORMLEY. [SEAL.]
mark.

her
MARY x GORMLEY. [SEAL.]
mark.

Signed, sealed, and delivered in presence of—
JAMES HARTLEY.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Lambert Blum, a justice of the peace in and for the said county, in the county and State aforesaid, do hereby certify that Marcus Gormley and Mary, his wife, who are personally known to me

186 as the same persons whose names are subscribed to the within instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Mary, wife of the said Marcus Gormley, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this fourth day of June, A. D. 1861.

LAMBERT BLUM, [SEAL.]
Justice of the Peace.

(Here follows diagram marked page 187.)

188 "GORMLEY EXHIBIT C."

Be it ordained by the council of the village of Glencoe:

SECTION 1. That Adams avenue between Grove and Bluff streets, in Gormley's Addition to Glencoe, as recorded March 11th, 1874, in Book 7 of Plats, page 36, be, and the same is hereby, vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

STATE OF ILLINOIS, } ss:
County of Cook, Village of Glencoe, }

I hereby certify that the foregoing is a true copy of an ordinance passed by the council of the village of Glencoe on the 4th day of October, A. D. 1881, by the affirmative vote of the whole of the members of said council then present, to wit, by a three-fifths vote of the whole number of members of said body, and that the same was duly posted on the 7th day of October, A. D. 1881.

Witness my hand and the corporate seal of the village of Glencoe this 7th day of October, A. D. 1881.

[Village of Glencoe, incorporated March 29, 1869, Cook county, Ill.]

JOHN L. DAY, *Clerk.*

No. 353,484. Recorded 17 Oct., A. D. 1881, at 9 o'clock a. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 17th day of Oct., A. D. 1881, as Document No.
188*a* 353,484, and recorded in Book 1112 of Records, at page 216.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at Chicago, this sixth day of October, A. D. 1884.

JAS. W. BROCKWAY, *Recorder.*

"GORMLEY EXHIBIT D."

Volume three of minutes of meetings of the council of the village of Glencoe, January 3d, 1882.

Regular meetings of the council at 7.30 p. m.

Present: Fletcher, Law, Sherwood, and the president, Hovey.

Absent: Dennis and Fehd.

Minutes of meeting of December 3 read and, on motion of Sherwood, approved.

Bill of J. Clapp, window	$1 50
Bill of Ralph Miller, services as janitor and cash paid freight	12 25
Bill of the Magee Furnace Co., furnaces for school	245 00
Bill of J. L. Day, services as clerk, & incidentals	27 50
Bill of Joe Brandle, work on road	5 50
Bill of E. Betzinger, service as street commissioner	5 50
Bill of Street Inspector Gormley	6 50
Schedule of Miss Taylor, of school teaching during December, showing due her	40 00
Schedule of E. Flagg, of school teaching during December, showing due him	75 00

were read and ordered paid, the window being taken separately and vote being—

Ayes—Fletcher, Law, and Sherwood.

Noes—None.

188b Dennis here came in. The report of the commissioners on grading, &c., of Railroad avenue was read and, on motion of Sherwood, adopted.

The bill of said commissioners in amount of ten dollars was read and, on motion of Law, ordered paid, the vote being—

Ayes—Dennis, Fletcher, Law, and Sherwood.

Noes—None.

Bill of C. F. Dennis, school supplies, $1,021, read and, on motion of Law, ordered paid, the vote being—

Ayes—Dennis, Fletcher, Law, and Sherwood.

Noes—None.

A petition for a sidewalk on Linwood avenue was read and, on motion of Fletcher, referred to the committee on streets and alleys.

Fletcher moved that Sherwood be authorized to have vestibule doors built to the school-house, with proper fixtures, and also to attach suitable springs to the outer doors. Carried.

Ayes—Dennis, Fletcher, Law, and Sherwood.

Noes—None.

The street commissioners' report read and approved; the street inspectors, report was read and approved.

The report of Street Inspector Gormley on the condition of Fletcher avenue was read and adopted.

Dennis moved that the committee on streets and alleys be authorized to let a contract for the completion of Fletcher avenue in accordance with the suggestion of the street inspector. Carried.

Ayes—Dennis, Fletcher, and Law and Sherwood.

Noes—None.

The report of work on the smoke-shaft was read and filed.

An ordinance for the condemning of sidewalks on Greenleaf avenue was presented, read, and adopted, on motion of
188c Fletcher, by the following vote:

Ayes—Dennis, Law, Fletcher, and Sherwood.

Noes—None.

Said ordinance is as follows:

An ordinance for the condemning of the sidewalk on the east side of Greenleaf avenue between Park avenue and Hazel avenue.

Be it ordained by the council of the village of Glencoe:

SECTION 1. That the sidewalk on the east side of Greenleaf avenue between Park avenue and Hazel avenue be, and the same is hereby, condemned.

SECTION 2. That this ordinance take effect and be in force from and after its passage and posting ten days.

The following ordinance was then read and adopted by vote of Dennis, Fletcher, Law, and Sherwood (on motion of Fletcher), to wit:

An ordinance for sidewalk on the east side of Greenleaf avenue, between Park avenue and Hazel avenue.

Be it ordained by the council of the village of Glencoe:

SECTION 1. That a sidewalk 5¼ feet wide, to be made of two-inch pine plank, not less than eight nor more than ten inches wide, laid at the established grade of said Greenleaf avenue, upon three pine stringers 3 by 4 inches, said stringers to rest on two-inch pine blocks eight by ten inches, said blocks to be six feet apart, each plank to be nailed to the stringers with four twenty-penny nails, each block to be nailed to the stringers with two twenty-penny nails, and all lumber used in the construction of said sidewalk to be good sound lumber and not inferior to the grade known as choice common, be, and the same is hereby, ordered constructed on the east side of Greenleaf avenue between Park avenue and Hazel avenue, where there is now an old condemnedsidewalk:

Provided, however, That the owner of any lot or piece of ground fronting on the said contemplated sidewalk should be
188*d* allowed twenty days after the time this ordinance shall take effect in which to construct said sidewalk opposite his land and thereby relieve the same from assessment.

Said work to be done under the superintendence of the committee on streets and alleys.

SECTION 2. That so much of said improvement as shall not be made by said owners within the time aforesaid shall be made and the cost thereof paid for by a special assessment to be levied upon the property benefited thereby to the amount that the same may be legally assessed therefor, and the remainder of such cost to be paid by general taxation in accordance with article IX of an act of the General Assembly of the State of Illinois entitled "An act to provide for the incorporation of cities and villages," approved the tenth day of April, 1872, and adopted by the council of said village of Glencoe by ordinance passed the 15th day of September, A. D. 1873.

SECTION 3. That Michael Gormley, Willis Sherwood, and Alexander Hammond be, and they are hereby, appointed commissioners to make an estimate of the cost of so much of said improvement as shall

not have been made by said owner within the time aforesaid, including labor, material, and all other expense attending the same, and the cost of making and levying the assessment therefor.

SECTION 4. This ordinance shall be in force from and after its passage and posting ten days.

—. Law read the following ordinance and moved its adoption—motion carried by following vote:

Ayes—Dennis, Law, Fletcher, and Sherwood.

Noes—None—to wit:

An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

188*e* Be it ordained by the council of the village of Glencoe:

SECTION 1. That the following street and parts of streets as laid out on a plat entitled "Gormley's Addition to Glencoe," being a subdivison of the S. W. ¼ of section seven and the W. ½ of the N. E. ¼ of section eighteen, being all in township 42, range 13, in Cook county and State of Illinois, and filed for record in the recorder's office of Cook county and State of Illinois March 11th, 1874, in Book 7 of Plats, page 36:

1. Washington avenue between Grove street and Bluff street, and Washington avenue between Valley street and Prairie street.
2. Adams street.
3. Jefferson avenue.
4. Madison avenue.
5. Monroe avenue.
6. Jackson avenue.
7. Bluff street between Adams avenue and Jackson avenue.
8. Valley street between Adams avenue and Jackson avenue.
9. Wood street between South avenue and Jackson avenue.
10. Prairie street between South avenue and Jackson avenue—be, and the same are hereby, vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

On motion of — Law, the meeting adjourned.

(Signed) JOHN L. DAY, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Michael Gormley on oath says he is sidewalk inspector of said village of Glencoe, and that the foregoing is a true copy of
188*f* all the acts, doings, and proceedings of the said council of the village of Glencoe had at its regular monthly meeting on the third day of January, A. D. 1882, as appears by the record therof in the charge, custody, and control of its clerk, John L. Day; and, further, that three written copies of said proceedings, particularly including the said ordinance entitled "An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe," were posted up in three of the most public places in

said village on the 24th of January, 1882, and within thirty days after the passage of said ordinance by the council of said village of Glencoe.

MICHAEL GORMLEY.

Selden Fish, Notarial Seal, Cook Co., Ill. Subscribed and sworn to before me this 24th day of January, 1882.

SELDON FISH,
Notary Public.

No. 371,462. Recorded January 24, 1882, at 11 o'clock a. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 24 day of January, A. D. 1882, as Document No. 371,462, and recorded in Book 1166 of Records, at page 31.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this sixth day of October, A. D. 1884.

JAS. W. BROCKWAY, *Recorder.*

Be it ordained by the council of the village of Glencoe: That
188*g* any and all ordinances heretofore passed by this council vacating any streets and parts of streets in "Gormley's Addition to Glencoe," or purporting so to do, are hereby repealed, and all the streets and parts of streets shown in the first and original recorded plat of said addition are hereby declared to be public streets.

I hereby certify that the foregoing is a true copy of an ordinance passed by the council of the village of Glencoe the 7th day of February, 1882, and that the same was posted the 11th day of February, 1882.

Witness my hand and the corporate seal of the village of Glencoe this 11th day of February, 1882.

[Village of Glencoe, Cook County, Ill. Incorporated March 29, 1869.]

JOHN L. DAY,
Clerk of the Village of Glencoe.

No. 375,081. Recorded Feb'y 13, 1882, at 10 o'clock a. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 13th day of Feb'y, A. D. 1882, as Document No. 375,081, and recorded in Book 1155 of Records, at page 396.

In testimony whereof I have hereunto set my hand
[SEAL.] and affixed my official seal, at Chicago, this twenty-second day of November, A. D. 1884.

JAS. W. BROCKWAY, *Recorder.*

188*h* STATE OF ILLINOIS, } ss:
County of Cook, }

I, John G. Rogers, chief and presiding justice of the circuit court of Cook county, Illinois, do hereby certify that the foregoing copies of instruments, Document- numbers 353,484, 371,462, and 375,081, certified to by James W. Brockway, recorder of Cook county, Illinois, are authenticated in due form and by the proper officer and in such manner and form that they would be received in evidence in any of the courts in this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this tenth day of January, A. D. 1885.

[SEAL.] JNO. G. ROGERS,
Chief and Presiding Justice of the Circuit Court of Cook County, Illinois.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Henry Best, clerk of the circuit court of Cook county, Illinois, do hereby certify that I am well acquainted with the handwriting of Honorable John G. Rogers, whose name is subscribed to the foregoing certificate, and that the same is his genuine signature, and that he was, at the time of signing the same and is now, chief and presiding justice of the said circuit court, duly elected, qualified, and commissioned, and that as such full faith and credit are and of right ought to be given to all his official acts.

In testimony whereof I have hereunto subscribed my hand and affixed the seal of said court, at my office, in Chicago, Illinois, this 10th day of January, A. D. 1885.

HENRY BEST,
188*i* [SEAL.] *Clerk of the Circuit Court of Cook County, Illinois.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Richard Prendergast, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of Illinois, do hereby certify that the foregoing copies of instruments, Document- numbers 353,484, 371,462, and 375,081, certified to by James W. Brockway, recorder of Cook county, Illinois, are authenticated in due form and by the proper officer and in such manner and form that they would be received in evidence in any of the courts in this State.

In testimony whereof I hereunto set my hand and direct the seal of said court to be affixed, at my chambers, in Chicago, this 7th day of February, 1885.

[SEAL.] RICHARD PRENDERGAST,
County Judge.

STATE OF ILLINOIS, } ss:
Cook County, }

I, M. W. Ryan, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that I am well acquainted with the handwriting of Honorable Richard Prendergast, whose name is subscribed to the foregoing certificate, and that the same is his genuine signature, and that he was, at the time of signing the same and is now, county judge of Cook county and sole presiding judge of the county court of Cook county, in the State of
189 Illinois, duly elected, qualified, and commissioned, and that as such full faith and credit are and of right ought to be given to all his official acts.

In witness whereof I have hereunto set my hand and affixed the seal of the county court of Cook county, Illinois, at Chicago, in said county, this 7th day of February, 1885.

[SEAL.] M. W. RYAN,
Clerk of County C't.

This indenture, made this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven (1877), between Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, of Glencoe, in the county of Cook and State of Illinois, party of the first part, and Adolf Loeb, of the city of Chicago, county of Cook, and State of Illinois, party of the second part, as trustee as hereinafter specified (and in case of the death, absence, or removal from said county of Cook, refusal to act, or inability to act of said party of the second part, then James Bolton, of said city of Chicago, shall be, and he is hereby, appointed and made successor in trust to said party of the second part under this deed for the uses and purposes hereinafter expressed, with the same power and authority as said trustee)—

Witnesseth: That whereas the said Morton Culver and Michael Gormley are justly indebted in the sum of ten thousand dollars, secured to be paid by their one certain promissory note, bearing even date herewith, payable to the order of themselves and by them indorsed, and due three (3) years after date, for the sum of ten thousand ($10,000) dollars, with interest at the rate of nine (9) per cent.
190 per annum, payable semi-annually, the several semi-annual interest installments being evidenced and secured by their six notes of even date herewith, payable to the order of themselves and by them endorsed, and due, respectively, in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, for the sum of four hundred and fifty ($450.00) dollars, each with interest at the rate of ten per cent. per annum after due and payable at the Chemical National Bank of New York;

And whereas the said party of the first part are desirous of securing the prompt and full payment of said promissory notes and interest that may accrue thereon, in whose hands soever the same may be: Now, therefore, the said party of the first part, in consideration of the premises and for the purposes aforesaid and in the further consideration of one dollar to them in hand paid by the said party

of the second part, the receipt whereof is hereby confessed, have and do hereby grant, bargain, sell, and convey unto the said party of the second part, his successor in trust aforesaid and his and their heirs and assigns, all the following-described lands and premises situate in the town of New Trier, county of Cook, and State of Illinois, to wit:

All of blocks number- three (3), four (4), five (5), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), and lots numbers three to twenty-two (3–22), both inclusive, in block number six (6), all in Gormley's Addition to Glencoe; also lots number- one (1), two (2), three (3), four (4), five
191 (5), six (6), fifteen (15), sixteen (16), nineteen (19), twenty (20), twenty-one (21), and twenty-two (22), in block number two (2), and all of block number three (3), and lots number- one to sixteen (1–16), both inclusive, in block number (6), all in Culver and Johnson's Addition to Glencoe, Cook county, Illinois:

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his successor in trust aforesaid and his and their heirs and assigns forever; in trust, nevertheless, that in case of default in the payment of the said promissory notes, or either of them or any part thereof, according to the tenor and effect of said notes, or in case of waste or non-payment of taxes or assessments, or neglect to procure or renew insurance, as hereinafter provided, or in case of the breach of any of the covenants or agreements herein mentioned, then and from thenceforth it shall be lawful for the said party of the second part or his successor in trust, on application of the legal holder of said promissory notes or either of them, to enter upon, possess, hold, and enjoy the above-granted premises, and either with or without such entry to sell and dispose of said premises hereby granted and all right, title, benefit, and equity of redemption of said party of the first part, their heirs and assigns, therein at public auction, at the north door of the Chamber of Commerce, in the city of Chicago, in the State of Illinois, or on said premises or on such place as may be specified in the notice of such sale, for the highest and best bid price the same will bring in cash, thirty days' previous notice of such sale having been given by publication once in each week for four successive weeks in the Chicago Legal News, or in any newspaper at that time published in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale good and
192 sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale and the purchase-money paid thereon, after first paying all costs of advertising, sale, and conveyance, including the reasonable fees and commissions of said party of the second part, attorneys' fees, and all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with interest thereon at ten per cent. per annum, then to pay the principal of said notes, whether due

and payable by the terms thereof or not, and interest on said notes up to the time of such sale, rendering the overplus (if any) unto the said party of the first part, their legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money; which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid or any part thereof by, from, through, or under said party of the first part or any of them.

And in case of a foreclosure of this trust deed, as provided by section thirteen of an act of the General Assembly of the State of Illinois entitled "An act to revise the law in relation to mortgages of real and personal property," approved March 26th, 1874, or under any law of this State, upon default and application made to the said party of the second part or his successor in trust as aforesaid by any *cestui que trust* under this deed, it shall and may be lawful for the said party of the second part, in his own name or otherwise, by suit in any court of competent jurisdiction, to obtain a decree for the sale and conveyance of the whole or any part of said premises
193 for the purposes herein specified by said party of the second part as such trustee or as special commissioner under order of court, and out of the proceeds of any such sale to first pay the cost of such suit, including his reasonable charges as attorney and solicitor therein, in addition to and besides the costs of advertising, sale, conveyance, and moneys advanced, with interest as above provided, and also all attorneys' fees incurred by the legal holder of said notes on behalf of the collection thereof, by sale or otherwise, then to pay the amount found by the court to be due and payable upon the indebtedness aforesaid; and in case of any suit or proceedings at law or in equity wherein said party of the second part shall be made a party by reason of his trusteeship under this deed he shall be allowed and paid his reasonable costs, charges, attorneys' and solicitors' fees in such suit or proceedings by said party of the first part, and the same shall be a further charge and lien upon said premises under this deed, to be paid out of the proceeds of sale thereof, if not otherwise paid by said party of the first part.

And in case of the appointment by any court of a new trustee to execute the trust hereby created the sum of two hundred dollars for the attorneys' or solicitors' fee of the petitioner in such proceeding and all other expenses of such appointment and the execution of said trust shall be allowed and taken from the proceeds of the sale of said premises.

And in consideration of the money paid as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purposes aforesaid and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part do hereby release and waive all right under and benefit of
194 the exemption and homestead laws of the State of Illinois in and to the land and premises aforesaid and the proceeds of

sale thereof, and agree to surrender up possession thereof to the purchaser or purchasers at such sale peaceably on demand.

And the said party of the second part, with or without readvertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time at his discretion, and also to sell the said premises entire, without division, or in parcels as he may prefer or think best.

And the said Morton Culver and Michael Gormley, for themselves and their heirs, executors, — administrators, covenant and agree to and with the said party of the second part, his successor in trust hereinbefore named and their assigns, that at the time of the ensealing and delivery of these presents they are well seized of said premises in fee simple and have good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatsoever; that the said party of the first part will in due season pay all taxes and assessments on said premises and exhibit once a year on demand receipts of the proper persons to said party of the second part showing payment thereof until the indebtedness aforesaid shall be fully paid, and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness insured in such company or companies as the holder or holders of said notes may from time to time direct for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said party of the first part, and will assign, with proper consent of the insurers, the policy or policies
195 of insurance to said party of the second part as further security aforesaid; and in case of the refusal or neglect of said party of the first part or either of them thus to insure or assign the policies of insurance or to pay taxes said party of the second part or his successor in trust or the holder of said notes or either of them may procure such insurance or pay such taxes, and all moneys thus paid, with interest thereon at ten per cent. per annum, shall become so much additional indebtedness secured by this deed of trust and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part.

Upon maturity of the within-named indebtedness the owner of any lot or lots included in the property hereinbefore conveyed may have the same released from this deed of trust upon payment on account of said indebtedness, at the rate of twenty-five (25) dollars per lot and all accrued and unpaid interest on said amount of twenty-five dollars.

In case of full payment of all the indebtedness aforesaid prior to any sale of the lands and premises above described or any part thereof, and a performance of the covenants and agreements herein made to be performed by the said party of the first part, then a reconveyance to be made to the said party of the first part, their heirs or assigns, at their expense; and in case any notice of sale of said premises or any part thereof shall be published and the said indebtedness shall be paid after any such publication and before sale the said party of the first part shall pay for such publication, and

also attorneys' and trustees' fees for services and all expenses therein to the date of such payment.

And it is stipulated and agreed that in case of default
196 in any of said payments of principal or interest, according to the tenor and effect of said promissory notes aforesaid or either of them or any part thereof, or of a breach of any of the covenants or agreements herein by the party of the first part, their executors, administrators, or assigns, then and in that case the whole of said principal sum hereby secured and the interest thereon to the time of sale may at once, at the option (without notice thereof to said party of the first part of [or] their heirs, assigns, or legal representatives) of the legal holder thereof become due and payable, and the said premises be sold in the manner and with the same effect as if the said indebtedness had matured.

And said party of the first part, for themselves and their heirs and assigns, do further covenant and agree to and with said party of the second part, his successor in trust aforesaid and his heirs and their assigns, that in case of a sale and conveyance as aforesaid of said premises any deed or deeds of conveyance made in pursuance of such sale shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions, and requirements of this deed of trust by the party of the second part or his successor in trust aforesaid in advertising and making such sale and conveyance to the extent of the recitals contained in such deed or deeds.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of—

MICHAEL GORMLEY. [SEAL.]
ELIZA GORMLEY. [SEAL.]
MORTON CULVER. [SEAL.]
EUGENIA M. CULVER. [SEAL.]

197 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Nelson Culver, a notary public in and for the said county, in the State aforesaid, do hereby certify that Morton Culver and Eugenia M. Culver, his wife, and Michael Gormley and Eliza Gormley, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this eighteenth day of May, 1877.

[NOTARIAL SEAL.] NELSON CULVER,
Notary Public.

(NOTE.)—The premises securing the notes herein described were sold this day pursuant to notice for the aggregate sum of eight

thousand eight hundred and forty-eight $\frac{50}{100}$ dollars to the following parties and for the respective sums, to wit:

To Edward Clark, for	$6,711 00
" S. J. Condon, "	600 00
" S. J. Condon, "	657 50
" W. H. Stubbins, "	785 00
" A. H. Hovey, "	95 00
	$8,848 50

Chicago, September 10th, 1878.

STATE OF ILLINOIS, } ss.
Cook County, }

Endorsed: Filed May 18, 1879, 3 p. m. Recorded in Book 758 of Records, on page 232. Jas. W. Brockway, recorder.

198 This indenture, made this tenth day of September, 1878, between Adolph Loeb, of the city of Chicago, of the county of Cook and State of Illinois, party of the first part, and Edward Clark, of the city to New York, of the county of New York and State of New York, party of the second part—

Witnesseth: That whereas Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, by a certain trust deed dated the fifteenth day of May, 1877, did bargain, sell, and convey unto Adolph Loeb as trustee, his successor in trust, his and their heirs and assigns, the premises hereinafter described, with other property, to secure the payment of one promissory note for the sum of ten thousand ($10,000) dollars, executed by the said Morton Culver and Michael Gormley and payable to the order of themselves three years after date, and six semi-annual interest notes for the sum of four hundred and fifty ($450.00) dollars each, of like date, and due, respectively, in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, with interest, at the rate of ten per cent. per annum, after due, and payable at the Chemical National Bank of New York;

And whereas it is provided in and by said trust deed, in case of default in the payment of said promissory notes or either of them or any part thereof, according to the tenor and effect thereof, then and from thenceforth it should be lawful for the said party of the first part, as trustee, on the application of the legal holder of said promissory notes or either of them, to sell and dispose of said premises and all the right, title, benefit, and equity of redemption of the said Morton Culver and Eugenia M., his wife, and Michael Gormley
199 and Eliza, his wife, their heirs and assigns, therein, at public auction, at the north door of the chamber of commerce in the city of Chicago aforesaid, for the highest and best price the same would bring in cash, after having published a notice as provided in and by said trust deed, and also make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the premises so sold; which said trust deed is recorded in the

recorder's office of Cook county, in the State of Illinois, in Book 758 of Records, on page 232;

And whereas, also, default having been made in the payment of a balance of two hundred and fifty ($250.00) dollars on the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due six months after the date thereof ($200.00 having been paid thereon), and also of the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due twelve months after the date thereof, and the right legal holder of said notes having by reason of such default declared the whole of said principal sum due and payable, and having made application to the said party of the first part, the trustee in said trust deed named, and requested him as such trustee to sell and dispose of said premises under the power in said trust deed and for the purposes therein stated, said party of the first part, on the first day of August, 1878, caused a notice to be published in the Chicago Legal News, a newspaper published in the city of Chicago, county of Cook, and State of Illinois, that said premises hereinafter described would, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, be sold at public auction, at the north door of the chamber of commerce in the said city of Chicago, to the highest bidder, for
200 cash, by virtue of the power and authority in him vested by said trust deed; which said notice was published four times in said paper, once each week consecutively, commencing on the third day of August, 1878, and ending on the twenty-fourth day of August, 1878;

And whereas, also, the said premises having been by the said party of the first part, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, in the manner prescribed in and by said trust deed and at the place last aforesaid, in pursuance of said notice, offered for sale, at public auction, to the highest bidder, for cash, and the said party of the second part having been the highest bidder therefor and having bid for the tracts in Gormley's Addition to Glencoe, to wit, for block 4, four hundred and twenty dollars; for blocks 5, 9, 10, 17, & 21, three hundred dollars each; for blocks 8, 11, 12, 13, 14, 15, 19, 20, 22, 23, and 24, three hundred and fifty dollars each; for block 16, four hundred and fifty dollars; for block 18, four hundred dollars; and for the tracts in block 6, in Culver's and Johnson's Addition to Glencoe, to wit, for lot 7, twenty-one dollars; for lots 8, 9, 10, 13, 14, 15, 16, ten dollars each, making an aggregate sum of six thousand *dollars* seven hundred and eleven ($6,711.00) dollars, he was duly declared the purchaser thereof:

Now, therefore, this indenture witnesseth: That said party of the first part, as trustee as aforesaid, for and in consideration of the sum so bid as aforesaid to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, and
201 parcels of land, situated in the county of Cook and State of

thousand eight hundred and forty-eight $\frac{50}{100}$ dollars to the following parties and for the respective sums, to wit:

To Edward Clark, for		$6,711 00
" S. J. Condon,	"	600 00
" S. J. Condon,	"	657 50
" W. H Stubbins,	"	785 00
" A. H. Hovey,	"	95 00
		$8,848 50

Chicago, September 10th, 1878.

STATE OF ILLINOIS, } ss:
Cook County, }

Endorsed: Filed May 18, 1879, 3 p. m. Recorded in Book 758 of Records, on page 232. Jas. W. Brockway, recorder.

198 This indenture, made this tenth day of September, 1878, between Adolph Loeb, of the city of Chicago, of the county of Cook and State of Illinois, party of the first part, and Edward Clark, of the city to New York, of the county of New York and State of New York, party of the second part—

Witnesseth: That whereas Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, by a certain trust deed dated the fifteenth day of May, 1877, did bargain, sell, and convey unto Adolph Loeb as trustee, his successor in trust, his and their heirs and assigns, the premises hereinafter described, with other property, to secure the payment of one promissory note for the sum of ten thousand ($10,000) dollars, executed by the said Morton Culver and Michael Gormley and payable to the order of themselves three years after date, and six semi-annual interest notes for the sum of four hundred and fifty ($450.00) dollars each, of like date, and due, respectively, in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, with interest, at the rate of ten per cent. per annum, after due, and payable at the Chemical National Bank of New York;

And whereas it is provided in and by said trust deed, in case of default in the payment of said promissory notes or either of them or any part thereof, according to the tenor and effect thereof, then and from thenceforth it should be lawful for the said party of the first part, as trustee, on the application of the legal holder of said promissory notes or either of them, to sell and dispose of said premises and all the right, title, benefit, and equity of redemption of the said Morton Culver and Eugenia M., his wife, and Michael Gormley
199 and Eliza, his wife, their heirs and assigns, therein, at public auction, at the north door of the chamber of commerce in the city of Chicago aforesaid, for the highest and best price the same would bring in cash, after having published a notice as provided in and by said trust deed, and also make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the premises so sold; which said trust deed is recorded in the

recorder's office of Cook county, in the State of Illinois, in Book 758 of Records, on page 232;

And whereas, also, default having been made in the payment of a balance of two hundred and fifty ($250.00) dollars on the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due six months after the date thereof ($200.00 having been paid thereon), and also of the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due twelve months after the date thereof, and the right legal holder of said notes having by reason of such default declared the whole of said principal sum due and payable, and having made application to the said party of the first part, the trustee in said trust deed named, and requested him as such trustee to sell and dispose of said premises under the power in said trust deed and for the purposes therein stated, said party of the first part, on the first day of August, 1878, caused a notice to be published in the Chicago Legal News, a newspaper published in the city of Chicago, county of Cook, and State of Illinois, that said premises hereinafter described would, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, be sold at public auction, at the north door of the chamber of commerce in the said city of Chicago, to the highest bidder, for
200 cash, by virtue of the power and authority in him vested by said trust deed; which said notice was published four times in said paper, once each week consecutively, commencing on the third day of August, 1878, and ending on the twenty-fourth day of August, 1878;

And whereas, also, the said premises having been by the said party of the first part, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, in the manner prescribed in and by said trust deed and at the place last aforesaid, in pursuance of said notice, offered for sale, at public auction, to the highest bidder, for cash, and the said party of the second part having been the highest bidder therefor and having bid for the tracts in Gormley's Addition to Glencoe, to wit, for block 4, four hundred and twenty dollars; for blocks 5, 9, 10, 17, & 21, three hundred dollars each; for blocks 8, 11, 12, 13, 14, 15, 19, 20, 22, 23, and 24, three hundred and fifty dollars each; for block 16, four hundred and fifty dollars; for block 18, four hundred dollars; and for the tracts in block 6, in Culver's and Johnson's Addition to Glencoe, to wit, for lot 7, twenty-one dollars; for lots 8, 9, 10, 13, 14, 15, 16, ten dollars each, making an aggregate sum of six thousand *dollars* seven hundred and eleven ($6,711.00) dollars, he was duly declared the purchaser thereof:

Now, therefore, this indenture witnesseth: That said party of the first part, as trustee as aforesaid, for and in consideration of the sum so bid as aforesaid to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, and
201 parcels of land, situated in the county of Cook and State of

thousand eight hundred and forty-eight $\frac{50}{100}$ dollars to the following parties and for the respective sums, to wit:

To Edward Clark, for		$6,711 00
" S. J. Condon,	"	600 00
" S. J. Condon,	"	657 50
" W. H Stubbins,	"	785 00
" A. H. Hovey,	"	95 00
		$8,848 50

Chicago, September 10th, 1878.

STATE OF ILLINOIS, } ss:
Cook County, }

Endorsed: Filed May 18, 1879, 3 p. m. Recorded in Book 758 of Records, on page 232. Jas. W. Brockway, recorder.

198 This indenture, made this tenth day of September, 1878, between Adolph Loeb, of the city of Chicago, of the county of Cook and State of Illinois, party of the first part, and Edward Clark, of the city to New York, of the county of New York and State of New York, party of the second part—

Witnesseth: That whereas Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, by a certain trust deed dated the fifteenth day of May, 1877, did bargain, sell, and convey unto Adolph Loeb as trustee, his successor in trust, his and their heirs and assigns, the premises hereinafter described, with other property, to secure the payment of one promissory note for the sum of ten thousand ($10,000) dollars, executed by the said Morton Culver and Michael Gormley and payable to the order of themselves three years after date, and six semi-annual interest notes for the sum of four hundred and fifty ($450.00) dollars each, of like date, and due, respectively, in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, with interest, at the rate of ten per cent. per annum, after due, and payable at the Chemical National Bank of New York;

And whereas it is provided in and by said trust deed, in case of default in the payment of said promissory notes or either of them or any part thereof, according to the tenor and effect thereof, then and from thenceforth it should be lawful for the said party of the first part, as trustee, on the application of the legal holder of said promissory notes or either of them, to sell and dispose of said premises and all the right, title, benefit, and equity of redemption of the said Morton Culver and Eugenia M., his wife, and Michael Gormley

199 and Eliza, his wife, their heirs and assigns, therein, at public auction, at the north door of the chamber of commerce in the city of Chicago aforesaid, for the highest and best price the same would bring in cash, after having published a notice as provided in and by said trust deed, and also make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the premises so sold; which said trust deed is recorded in the

recorder's office of Cook county, in the State of Illinois, in Book 758 of Records, on page 232;

And whereas, also, default having been made in the payment of a balance of two hundred and fifty ($250.00) dollars on the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due six months after the date thereof ($200.00 having been paid thereon), and also of the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due twelve months after the date thereof, and the right legal holder of said notes having by reason of such default declared the whole of said principal sum due and payable, and having made application to the said party of the first part, the trustee in said trust deed named, and requested him as such trustee to sell and dispose of said premises under the power in said trust deed and for the purposes therein stated, said party of the first part, on the first day of August, 1878, caused a notice to be published in the Chicago Legal News, a newspaper published in the city of Chicago, county of Cook, and State of Illinois, that said premises hereinafter described would, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, be sold at public auction, at the north door of the chamber of commerce in the said city of Chicago, to the highest bidder, for
200 cash, by virtue of the power and authority in him vested by said trust deed; which said notice was published four times in said paper, once each week consecutively, commencing on the third day of August, 1878, and ending on the twenty-fourth day of August, 1878;

And whereas, also, the said premises having been by the said party of the first part, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, in the manner prescribed in and by said trust deed and at the place last aforesaid, in pursuance of said notice, offered for sale, at public auction, to the highest bidder, for cash, and the said party of the second part having been the highest bidder therefor and having bid for the tracts in Gormley's Addition to Glencoe, to wit, for block 4, four hundred and twenty dollars; for blocks 5, 9, 10, 17, & 21, three hundred dollars each; for blocks 8, 11, 12, 13, 14, 15, 19, 20, 22, 23, and 24, three hundred and fifty dollars each; for block 16, four hundred and fifty dollars; for block 18, four hundred dollars; and for the tracts in block 6, in Culver's and Johnson's Addition to Glencoe, to wit, for lot 7, twenty-one dollars; for lots 8, 9, 10, 13, 14, 15, 16, ten dollars each, making an aggregate sum of six thousand *dollars* seven hundred and eleven ($6,711.00) dollars, he was duly declared the purchaser thereof:

Now, therefore, this indenture witnesseth: That said party of the first part, as trustee as aforesaid, for and in consideration of the sum so bid as aforesaid to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, and
201 parcels of land, situated in the county of Cook and State of

Illinois, known and described as follows, to wit: Blocks numbers four (4), five (5), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), in Gormley's Addition to Glencoe, and lots numbers seven (7), eight (8), nine (9), ten (10), thirteen (13), fourteen (14), fifteen (15), and sixteen (16), in block number six (6), in Culver and Johnson's Addition to Glencoe, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, as the same are described and conveyed in and by said trust deed, and also all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, as well as of the said party of the first part of, in, and to the above-described premises, with the appurtenances, as fully, to all intents and purposes, as the said party of the first part has power and authority to grant, sell, and convey the same by virtue of the said trust deed; to have and to hold the said above-granted premises, with their appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ADOLPH LOEB, *Trustee.* [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

202 I, William Loeb, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this tenth day of September, A. D. 1879.

[NOTARIAL SEAL.] WILLIAM LOEB,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Thomas E. Patterson, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, trustee, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth day of March, A. D. 1884.

[NOTARIAL SEAL.] THOMAS E. PATTERSON,
Notary Public.

STATE OF ILLINOIS, }
Cook County, } ss:

Endorsed: Recorded March 26, 1879, 2 p. m., Book 814 of Records, page 362. Jas. W. Brockway, recorder.

203 This indenture, made this tenth day of September, 1878, between Adolph Loeb, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Sarah J. Condon, of the same city, county, and State, party of the second part, witnesseth:

That whereas Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, by a certain trust deed dated the fifteenth day of May, 1877, did bargain, sell, and convey unto Adolph Loeb, as trustee, his successor in trust, his and their heirs and assigns, the premises hereinafter described, to secure the payment of one promissory note for the sum of ten thousand (10,000) dollars, executed by the said Morton Culver and Michael Gormley and payable to the order of themselves three years after date, and six semi-annual interest notes for the sum of four hundred and fifty ($450.00) dollars, each of like date and due, respectively, in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, with interest, at the rate of ten per cent. per annum, after due, and payable at the Chemical National Bank of New York.

And whereas it is provided in and by said trust deed that in case of default in the payment of said promissory notes or either of them or any part thereof, according to the tenor and effect thereof, then and from thenceforth it should be lawful for the said party of the first part, as trustee, on the application of the legal holder of said promissory notes or either of them, to sell and dispose of said premises and all the right, title, benefit, and equity of redemption of the said Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, their heirs and assigns, therein, at public auction,

204 at the north door of the chamber of commerce in the city of Chicago aforesaid, for the highest and best price the same would bring in cash after having published a notice as provided in and by said trust deed, and also make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the premises so sold, which said trust deed is recorded in the recorder's office of Cook county, in the State of Illinois, in Book 758 of Records, on page 232.

And whereas, also, default having been made in the payment of a balance of two hundred and fifty ($250.00) dollars on the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due six months after the date thereof, ($200.00 having been paid thereon), and also of the semi-annual interest note for the sum of four hundred and fifty ($450.00) dollars, due twelve months after the date thereof, and the legal holder of said notes having, by reason of such default, declared the whole of said principal sum due and payable and having made application to the said party of the first part, the trustee in said trust deed named, and requested him as such trustee to sell and dispose of said premises under the power in said trust deed and

for the purposes therein stated, said party of the first part on the first day of August, 1878, caused a notice to be published in the Chicago Legal News, a newspaper published in the city of Chicago, county of Cook and State of Illinois, that said premises hereinafter described would, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, be sold at public auction, at the north door of the chamber of commerce in the city of Chicago, to the highest bidder, for cash, by virtue of the power and authority in him vested by said trust deed; which said notice was published four times in said paper, once each week, con-
205 secutively, commencing on the 3d day of August, 1878, and ending on the twenty-fourth day of August, 1878.

And whereas also the said premises having been, by the said party of the first part, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, in the manner prescribed in and by said trust deed and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction to the highest bidder for cash, and the said party of the second part having been the highest bidder therefor, and having bid for the tracts in block 6, in Gormley's Addition to Glencoe, to wit:

For lot 3, twenty-seven dollars; for lot 4, thirty-three $\frac{50}{100}$ dollars; for lot 5, twenty-five dollars; for lot 6, thirty-one dollars; for lot 11, twenty-one $\frac{50}{100}$ dollars; for lot 12, twenty-nine $\frac{50}{100}$ dollars; also for block 3, in Culver and Johnson's Addition to Glencoe, four hundred and ninety dollars, making an aggregate sum of six hundred and fifty-seven $\frac{50}{100}$ dollars, he was duly declared the purchaser thereof:

Now, therefore, this indenture witnesseth: That said party of the first part, as trustee aforesaid, for and in consideration of the sum so bid as aforesaid to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, or parcels of land situate in the county of Cook and State of Illinois, known and described as follows, to wit: Block number three (3), in Culver and Johnson's Addition to Glencoe; also lots numbers three (3),
206 four (4), five (5), six (6), eleven (11), and twelve (12), of block number six (6), in Gormley's Addition to Glencoe:

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging as the same are described and conveyed in and by said trust deed, and also all the estate, right, title, interest, property, claim, — demand whatsoever, both in law and equity, of the said Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, as well as of the said party of the first part, of, in, and to the above-described premises, with the appurtenances, as fully to all intents and purposes as the said party of the first part hath power and authority to grant, sell, and convey the same by virtue of the said trust deed; to have and to hold the said above-granted premises, with their appurtenances and every

part thereof, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ADOLPH LOEB, *Trustee.* [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, William Loeb, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this tenth day of September, A. D. 1878.

207 [NOTARIAL SEAL.] WILLIAM LOEB,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Thomas E. Patterson, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, trustee, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth day of March, A. D. 1884.

[NOTARIAL SEAL.] THOMAS E. PATTERSON,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Endorsed: Recorded September 22, 1879, 11 a. m., in Book 938 of Records, page 58. Jas. W. Brockway, recorder.

Endorsed: Recorded Sept. 29, 1879, at 11 o'clock a. m., — Book 938 of Records, page 155. Jas. W. Brockway, recorder.

Endorsed: Recorded Mar. 31, 1884, at 1 o'clock p. m., in Book 1470 of Records, page 167. Jas. W. Brockway, recorder.

208 This indenture, made this tenth day of September, 1878, between Adolph Loeb, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Sarah J. Condon, of the same city, county, and State, party of the second part, witnesseth:

That whereas Morton Culver and Eugenia M., his wife, and

for the purposes therein stated, said party of the first part on the first day of August, 1878, caused a notice to be published in the Chicago Legal News, a newspaper published in the city of Chicago, county of Cook and State of Illinois, that said premises hereinafter described would, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, be sold at public auction, at the north door of the chamber of commerce in the city of Chicago, to the highest bidder, for cash, by virtue of the power and authority in him vested by said trust deed; which said notice was published four times in said paper, once each week, con-
205 secutively, commencing on the 3d day of August, 1878, and ending on the twenty-fourth day of August, 1878.

And whereas also the said premises having been, by the said party of the first part, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, in the manner prescribed in and by said trust deed and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction to the highest bidder for cash, and the said party of the second part having been the highest bidder therefor, and having bid for the tracts in block 6, in Gormley's Addition to Glencoe, to wit:

For lot 3, twenty-seven dollars; for lot 4, thirty-three $\frac{50}{100}$ dollars; for lot 5, twenty-five dollars; for lot 6, thirty-one dollars; for lot 11, twenty-one $\frac{50}{100}$ dollars; for lot 12, twenty-nine $\frac{50}{100}$ dollars; also for block 3, in Culver and Johnson's Addition to Glencoe, four hundred and ninety dollars, making an aggregate sum of six hundred and fifty-seven $\frac{50}{100}$ dollars, he was duly declared the purchaser thereof:

Now, therefore, this indenture witnesseth: That said party of the first part, as trustee aforesaid, for and in consideration of the sum so bid as aforesaid to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, or parcels of land situate in the county of Cook and State of Illinois, known and described as follows, to wit: Block number three (3), in Culver and Johnson's Addition to Glencoe; also lots numbers three (3),
206 four (4), five (5), six (6), eleven (11), and twelve (12), of block number six (6), in Gormley's Addition to Glencoe:

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging as the same are described and conveyed in and by said trust deed, and also all the estate, right, title, interest, property, claim, — demand whatsoever, both in law and equity, of the said Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, as well as of the said party of the first part, of, in, and to the above-described premises, with the appurtenances, as fully to all intents and purposes as the said party of the first part hath power and authority to grant, sell, and convey the same by virtue of the said trust deed; to have and to hold the said above-granted premises, with their appurtenances and every

part thereof, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ADOLPH LOEB, *Trustee.* [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, William Loeb, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, trustee, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this tenth day of September, A. D. 1878.

207 [NOTARIAL SEAL.] WILLIAM LOEB,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Thomas E. Patterson, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, trustee, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth day of March, A. D. 1884.

[NOTARIAL SEAL.] THOMAS E. PATTERSON,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Endorsed: Recorded September 22, 1879, 11 a. m., in Book 938 of Records, page 58. Jas. W. Brockway, recorder.

Endorsed: Recorded Sept. 29, 1879, at 11 o'clock a. m., — Book 938 of Records, page 155. Jas. W. Brockway, recorder.

Endorsed: Recorded Mar. 31, 1884, at 1 o'clock p. m., in Book 1470 of Records, page 167. Jas. W. Brockway, recorder.

208 This indenture, made this tenth day of September, 1878, between Adolph Loeb, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Sarah J. Condon, of the same city, county, and State, party of the second part, witnesseth:

That whereas Morton Culver and Eugenia M., his wife, and

Michael Gormley and Eliza, his wife, by a certain trust deed dated the fifteenth day of May, 1877, did bargain, sell, and convey unto Adolph Loeb, as trustee, his successor in trust, his and their heirs and assigns, the premises hereinafter described, with other property, to secure the payment of one promissory note for the sum of ten thousand ($10,000) dollars, executed by the said Morton Culver and Michael Gormley, and payable to the order of themselves three years after date, and six semi-annual interest notes for the sum of four hundred and fifty ($450.00) dollars each, of like date and due, respectively, in six (6), twelve (12), eighteen (18), twenty-four (24), thirty (30), and thirty-six (36) months after date, with interest, at the rate of ten per cent. per annum, after due, and payable at the Chemical National Bank of New York.

And whereas it is provided in and by said trust deed that in case of default in the payment of said promissory notes or either of them or any part thereof, according to the tenor and effect thereof, then and from thenceforth it should be lawful for the said party of the first part, as trustee, on the application of the legal holder of said promissory notes or either of them, to sell and dispose of said premises and all the right, title, benefit, and equity of redemption of the said Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, their heirs and assigns, therein, at public auction,
209 at the north door of the chamber of commerce, in the city of Chicago aforesaid, for the highest and best price, the same would bring in cash, after having published a notice as provided in and by said trust deed, and also make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the premises so sold; which said trust deed is recorded in the recorder's office of Cook county, in the State of Illinois, in Book 758 of Records, on page 232.

And whereas also default having been made in the payment of a balance of two hundred and fifty ($250.00) dollars on the semi-annual interest notes for the sum of four hundred and fifty ($450.00) dollars, due six months after the date thereof ($200.00 having been paid thereon), and also of the semi-annual note for the sum of four hundred and fifty ($450.00) dollars, due twelve months after the date thereof, and the legal holder of said notes having, by reason of such default, declared the whole of said principal sum due and payable and having made application to the said party of the first part, the trustee in said trust deed named, and requested him as such trustee to sell and dispose of said premises under the power in said trust deed and for the purposes therein stated, said party of the first part, on the first day of August, 1878, caused a notice to be published in the Chicago Legal News, a newspaper published in the city of Chicago, county of Cook and State of Illinois, that said premises hereinafter described would, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, be sold at public auction, at the north door of the chamber of commerce, in said city of Chicago, to the highest bidder, for cash, by virtue of the power and authority in him vested by said trust deed; which said notice was published four times in said paper, once each week con-

210 secutively, commencing on the third day of August, 1878, and ending on the twenty-fourth day of August, 1878.

And whereas also the said premises having been by the said party of the first part, on the tenth day of September, 1878, at ten o'clock in the forenoon of said day, in the manner prescribed in and by said trust deed and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction to the highest bidder for cash, and the party of the second part having been the highest bidder therefor and having bid for the tract hereinafter named the sum of six hundred ($600.00) dollars he was duly declared the purchaser thereof:

Now, therefore, this indenture witnesseth: That said party of the first part, as trustee as aforesaid, for and in consideration of the sum so bid as aforesaid to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lot, piece, or parcel of land situate in the county of Cook and State of Illinois, known and described as follows, to wit: Block number three (3), in Gormley's Addition to Glencoe, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, as the same are described and conveyed in and by said trust deed, and also all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said Morton Culver and Eugenia M., his wife, and Michael Gormley and Eliza, his wife, as well as of the said party of

211 the first part, of, in, and to the above-described premises, with the appurtenances, as fully to all intents and purposes as the said party of the first part hath power and authority to grant, sell, and convey the same by virtue of the said trust deed; to have and to hold the said above-granted premises, with their appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ADOLPH LOEB, *Trustee.* [SEAL.]

STATE OF ILLINOIS, } ss.
Cook County, }

I, William Loeb, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, who is personally known to me to be the same person whose name is subscribed to the forgoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this tenth day of September, A. D. 1878.

[NOTARIAL SEAL.]

WILLIAM LOEB,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Thomas E. Patterson, a notary public in and for the said county, in the State aforesaid, do hereby certify that Adolph Loeb, trustee, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this
212 day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth day of March, A. D. 1884.

[NOTARIAL SEAL.] THOMAS E. PATTERSON,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Endorsed: Recorded Sept. 22, 1879, 11 a. m., in Book 931 of Records, page 372. Jas. W. Brockway, recorder.

Endorsed: Recorded Sept. 29, 1879, at 11 o'clock a. m., Book 945 of Records, page 155. Jas. W. Brockway, recorder.

Endorsed: Recorded March 31, 1884, at 1 o'clock p. m., in Book 1470 of Records, page 171. Jas. W. Brockway, recorder.

This indenture witnesseth: That the grantor, Sarah J. Condon, (single), of the city of Chicago, in the county of Cook and State of Illinois, for the consideration of ten dollars, conveys and quitclaims to Alfred Corning Clark, of Cooperstown, county of Otsego, and State of New York, all interest in the following-described real estate, to wit:

Block number three (3), in Gormley's Addition to Glencoe; also block number three (3), in Culver and Johnson's Addition to Glencoe; also lots numbers three (3), four (4), five (5), six (6),
213 eleven (11), and twelve (12), in block number six (6), in Gormley's Addition to Glencoe, situated in the county of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 29th day of March, A. D. 1884.

SARAH J. CONDON. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Wm. H. Condon, a notary public in and for the said county, in the State aforesaid, do hereby certify that Sarah J. Condon, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-ninth day of March, A. D. 1884.

[NOTARIAL SEAL.] WM. H. CONDON,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Endorsed: Filed M'ch 31, 1884, 1 p. m., and recorded in Book 1378 of Records, on page 290. Jas. W. Brockway, recorder.

214 Testimony of Timothy M. Bradley, a witness on behalf of the complainant, taken before Henry W. Bishop, master in chancery, the 23d day of October, A. D. 1884.

Present: Mr. Pope, for complainant; Mr. Culver, for defendant.

Examined in chief by Mr. POPE:

Int. 1. Please state your name, age, residence, and occupation.
A. Timothy M. Bradley; age, 58; residence, town of Lakeview.
Q. Were you living in the city of Chicago in October, 1871?
A. No, sir.
Q. Did you do business there at that time?
A. Yes, sir; I was sheriff of Cook county at the time and had an office in the court-house.
Q. Do you remember the fire of Oct. 8th and 9th, 1871?
A. Yes, sir.
Q. You may state what became of the records of Cook county that existed prior to the fire of Oct., 1871.

Objected to because that has no pertinence to this case.

A. As far as I know, they were destroyed by fire.
Q. State what you know about that destruction.
A. I know everything that was really in the court-house was destroyed—at least, the day after the fire there was nothing left in it.
Q. How soon after the fire of October, 1871, did you visit the court-house in Cook county?
A. The next morning.
Q. What was the condition at that time?
A. It was hot.
Q. Was the court-house destroyed or not?
A. The walls of the east wing were standing and the cells of iron and stone of the jail were intact.
Q. How about the recorder's office?
A. Entirely gutted; nothing left of it or any of the rooms above it.

215 Q. Have you had transactions in the recorder's office since the fire of 1871?
A. I have filed papers for record there since.
Q. State whether you have ever found, or discovered, or heard of any records as having been saved.
A. I never knew that any were saved.
Q. When did the fire of October, 1871, begin?

A. There was a large fire on the West Side on Saturday, Oct. 7th; it burned over about forty acres when the fire was under control, but it started up again Sunday night, the 8th of October, and burned that night and the next day; the next day at sundown it was pretty nearly played out at Fullerton avenue.

Q. State what portion of the city was swept over by the fire.

A. Three-fourths of it, probably.

Cross-examination by Mr. CULVER:

Q. Were you engaged in any way, or have charge or control of the recorder's office of Cook county, or the books in it, during the month of October, 1871?

A. No, sir.

Q. Were you present at the recorder's office during the fire of October 8th and 9th, 1871?

A. No, sir.

Q. Can you swear, of your own knowledge, there were no records of the recorder's office of Cook county saved from that fire?

A. No, sir.

Q. Will you swear there were no books at all saved of the records of Cook county?

A. No, sir.

T. M. BRADLEY.

216 Testimony taken before Henry W. Bishop, master in chancery of said court, the 23d day of October, A. D. 1884.

Present: Mr. Pope, for complainant; Mr. Culver, for defendant.

THOMAS E. PATTERSON, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. POPE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. Thomas E. Patterson; 41 years of age; residence, Chicago; occupation, real-estate business.

Q. Did you ever have any business connections with Edward Clark, of Cooperstown, New York?

A. I have had.

Q. Is Edward Clark living or dead?

A. He is dead.

Q. When did he die?

A. Oct., 1882.

Q. What business relations did you have with him?

A. I was his agent for his loans and his real estate in the State of Illinois.

Q. For how long a time?

A. Beginning in the early part of 1879.

Q. Did you see him in New York during his lifetime?

A. I frequently saw him in New York and at Cooperstown.

Q. Did he have any children during his lifetime?

A. He had two children living since I have known him; two sons.

Q. Are they living or dead?

A. One of them died; the other, Alfred Corning Clark, now resides at Cooperstown, New York.

Q. Did the deceased son leave any descendants living?

A. He did not.

217 Q. Did he ever have any children?

A. Not that I know of.

Q. Was he ever married?

A. He was not married.

Q. Did Edward Clark leave any other child or children or descendants of any deceased child or children other than you have named?

A. He did not.

Cross-examination by Mr. CULVER:

Q. How do you know Edward Clark died in October, 1882?

A. I know from conversations held with his son Alfred Corning Clark and some conversations had with the executors, James Neehan and James Bunyan, and from reading copies of his will and proof of his death.

Q. Are those the only means of knowledge you have as to his death?

A. I have talked with others about his office about his death. I don't remember their names particularly.

Q. All you know is from what you have heard from others and what you have read?

A. That is all I know.

Q. How do you know that Edward Clark never had but two children?

A. From himself; he so informed me.

Q. What were the names of those two children?

A. Alfred Corning Clark was one, and the name of the other son has escaped me.

Q. Do you know the other son is dead?

A. Edward Clark so told me.

Q. Is that all the information you have?

A. That is all I have.

Q. That is hearsay information?

A. Yes, sir.

Q. How do you know he was never married?

218 A. I obtained that information from Edward Clark.

Q. How do you know he ever had any child or children?

A. All my information about him was obtained from Edward Clark.

Q. How do you know Alfred Corning Clark was the son of Edward Clark?

A. I have been introduced to him as the son of Edward Clark.

Q. By whom?

A. By Edward Clark and by James Meehan.

Mr. CULVER: I now move to strike out the evidence of this witness as to the death of Edward Clark, the number of children he had, the death of the one child, and whether he left any heirs, on the ground that it is all hearsay evidence.

I move to strike out all the evidence of Timothy M. Bradley because he does not appear to know anything about the destruction of the records of the recorder's office of Cook county.

Redirect examination:

Q. Have you done any business for Alfred Corning Clark since the decease of Edward Clark?

A. I have.

Q. State what relation you sustain towards him.

Objected to as immaterial.

A. I am his agent in the State of Illinois. I have sold property for him, collected moneys for him, and paid taxes for him, and generally looked after his interest in this State.

Q. Before the death of Edward Clark did you have any business relations with Alfred Corning Clark?

A. I did not.

Q. You may state who has charge of the property that you had charge of for Edward Clark during Edward Clark's lifetime

219 A. I have.

Q. To whom, if any one, do you report now in regard to that property?

Objected to as immaterial.

A. I report to F. G. Bourne, agent for Alfred Corning Clark.

Q. Have you conversed with at all or referred to Alfred Corning Clark in regard to matters of business which you transacted for Edward Clark during his lifetime, since Edward Clark's death?

Objected to as immaterial and irrelevant.

Q. I do not refer to minute discussions, but any reference to business?

Same objection.

A. I met Mr. Alfred Corning Clark in New York shortly after his father's death and we had a conversation generally about the fact that I had been his father's agent in this State and that he wished me to continue to so act for him as his agent and to report all my proceedings to F. G. Bourne in New York, who would fully represent him and was authorized to give me full instructions.

Q. Then, as I understand you, the matters of business which you transacted and the property which you took care of for Edward Clark during his lifetime you are now taking care of for Alfred Corning Clark; is that so?

Objected to.

A. That which belongs to Alfred Corning Clark I take care of for him; that which belongs to the estate of Edward Clark and is not

settled and personal property I report to James Meehan and James Bunyan, as executors of the estate of Edward Clark, deceased.

Q. Since the death of Edward Clark have you been to New York?

A. I have been to New York.

Q. Do you know where Alfred Corning Clark lives?

A. Yes, sir.

Q. Where?

A. I know the house—it is just west of Fifth avenue on
220 22d St., south-front house, and I think the number is eight.

Q. Where did Edward Clark live during his lifetime?

A. In the same house.

Q. Have you been present at that house since the death of Edward Clark?

A. I have not been.

Q. In your visits to New York have you ever seen Edward Clark since his reported decease?

A. I have not.

Q. Have you heard of his being present?

A. I have not.

Q. Have you heard of anybody transacting business in Chicago for Edward Clark since his reported decease?

Objected to.

A. I have not.

Q. Have you ever heard of anybody transacting business for Edward Clark since his decease in New York?

Objected to.

A. I have not.

Q. You spoke of James Bunyan and James Meehan. Have you ever seen either of these gentlemen here since the reported decease of Ed ard Clark?

A. I have seen James Bunyan here in Chicago since the death of Edward Clark.

Q. Do you know in what capacity he was acting at that time?

Objected to.

A. He stated to me that he came here to see to matters connected with the estate of Edward Clark.

Q. Do you know of his acting at that time in that capacity as one of the executors of Edward Clark, deceased, attending to busi-
221 ness here and seeing about business relating to that estate?

A. I do.

Q. Have you known of either James Bunyan or James Meehan attending to business in New York, since the reported decease of Edward Clark, as executors of Clark?

Objected to.

A. I have.

Q. Where?

A. Their office is at 25 West 23d St., New York.

Q. Have you received any letters or communications from them as such executors?

A. A great many.

Q. How often?

A. I should judge ten or twelve a month; possibly more.

Q. Have you written to them reporting to them as executors of Edward Clark?

A. Very frequently.

Q. In what capacity did you report to them, so far as you yourself were concerned?

A. As agent of the executors of the estate of Edward Clark—that was my position.

Q. Do you know whether Edward Clark married during his lifetime?

A. He told me he was a widower since I have known him.

Q. Ever visit him at his house, either at Cooperstown or New York?

A. I did visit him at Cooperstown and at New York during his lifetime.

Q. Ever see any wife there or person purporting to be a wife of his?

A. I did not.

Q. How often were you there?

A. Twice at Cooperstown and twice at his private residence in New York. The rest of the time I did business with him at his place of business.

222 Q. Where did he reside at Cooperstown?

A. I can't tell you; I don't know the name of a single street or anything about it. He has the largest house in Cooperstown—a very large place and grounds. I could not locate it, otherwise than it is south of the lake.

Mr. CULVER: I move to strike out all of the redirect examination of the witness because it is not redirect examination and because it is not competent, relevant, or pertinent to the case, and because the solicitor for the complainant has stated that he is doing this for the purpose of making a large record.

Mr. POPE: The reporter will please note that the solicitor for complainant says that the statement is utterly untrue, and, on the contrary, that in the hearing of the reporter he states to the defendant's solicitor that if objections were interposed of the character that were made he should be compelled to and would put in the evidence of a large number of witnesses to prove facts asserted in the bill. Complainant's solicitor furthermore asked Mr. Culver or requested him to state if he intended to make objections of the character he was making and contest the proof upon questions which everybody knew were facts, and that if he so continued to make objections of that character that complainant's counsel should be compelled to put in a record such as he is now making; that complainant's solicitor regarded the objections that were made as of a puerile character, and wanted a complete understanding upon the subject, so that com-

plainant's solicitor should know whether it was necessary to put in the proof of so many witnesses to prove, beyond controversy, complainant's position.

Adjourned to 12 a. m. Saturday, Oct. 25th.

THOMAS E. PATTERSON.

223 Testimony taken before Henry W. Bishop, master in chancery, on the 25th day of October, A. D. 1884.

Present: Mr. Pope, for complainant; Mr. Culver, for defendant.

CHARLES D. MARTIN, a witness called on behalf of complainant, being duly sworn, deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. Charles D. Martin; occupation, abstracts of title, with Handy & Co.

Q. Are you a member of that firm?

A. I am.

Q. What is the business of that firm?

A. Making abstracts of title to real estate in Cook county.

Q. What was your business in October, 1871?

A. I was deputy clerk of the circuit court and deputy recorder of Cook county, and as such was chief clerk of the recorder's office of Cook county.

Q. Do you remember what time the fire of Oct. 8th and 9th commenced?

A. It commenced in the evening of Oct. 8th, 1871.

Q. Who had charge at that time of the recorder's office—under whose supervision and charge were the records of Cook county?

A. Norman T. Gassette was recorder, and he had charge of the records.

Q. You were his chief deputy?

A. Yes, sir.

Q. Where were the records of the recorder's office of Cook county at the close of business hours on Saturday, October 8th, 1871?

A. In the recorder's office.

Q. In the vault or not?

A. There was no vault.

Q. *What* was the recorder's office considered fire proof?

A. It was considered a fire-proof building, and they were

224 in the office proper.

Q. When did the fire of October 8th and 9th, 1871, cease?

A. I can't state when it ceased.

Q. About when?

A. I should think about the 9th or 10th of October, 1871.

Q. You were present, you say, in the recorder's office during October 8th, 1871?

A. I was there October 7th, 1871.

Q. October 8th was Sunday?

A. Yes, sir.

Q. When did you next visit the recorder's office or the place where the recorder's office was?

Q. Either Tuesday or Wednesday, which would be October 10th or 11th.

Q. State if you made any search for the records of the recorder's office of Cook county at that time or any subsequent time.

A. There were no records there at that time.

Q. Did you find anything left of them?

A. In looking over the debris of the office I picked up one little piece of record at that time.

Q. How large was that piece?

A. About as large as a person's hand—among the ashes.

Q. What became of the building in which the records were kept at that time?

A. The building was destroyed internally; the walls remained.

Q. What became of the apartments constituting the recorder's office?

A. They were destroyed—the inside all burned up.

Q. What was the condition of the building when you came there the first time after the fire of October 8th and 9th, 1871—the condition of the recorder's office?

A. It was in ruins.

225 Q. Have you ever heard or known of any of the records of the recorder's office of Cook county which existed prior to the fire of October 8th and 9th, 1871, turning up or being found?

A. I never have. I know none of them ever came into the office during the term of Norman T. Gassetts.

Q. How long did that last?

A. Until the first Monday of December, 1872?

Q. Did you continue in his office during the whole of that time?

A. I did.

Q. You say your present business is that of abstract making?

A. Yes, sir.

Q. On what do you found your—the abstract you make where you desire to show a record of the proceedings before the fire of Oct. 9, 1871?

Objected to as immaterial.

A. From minutes and from memoranda taken from the records before their destruction.

Q. Whose memoranda are those you refer to?

Objected to.

A. Memoranda that were in possession of Chas Bros., Shortall & Hoard, and Jones & Sellers, who were in the business of making abstracts prior to the fire.

Q. Do you found such abstracts upon any prior records of the recorder's office of Cook county which existed prior to the fire of Oct. 8th and 9th, 1871? I mean the records themselves.

Objected to.

A. We made our abstracts from minutes taken from those records before the fire, but not from the records themselves. We do
226 not take them from the records themselves, but take them from the minutes taken from them.

Q. Do you know any abstract firm who take them from records of the recorder's office prior to October 8th and 9th, 1871?

Objected to as irrelevant and incompetent.

A. No, sir.

Cross-examination by Mr. CULVER:

Q. Is it a fact that in the abstract offices in this city abstracts are made from the minutes which are contained in the offices where the abstracts are made?

A. Minutes of any matters which are contained in an abstract that appeared of record prior to the fire are taken from minutes in the abstract offices.

Q. How is it about abstracts made since October 8th and 9th?

A. Those are abstracted from the records themselves.

Mr. POPE: Records which now exist?

A. Yes, sir.

Q. Dating back to what date?

A. Records made since the fire of October 8th and 9th, 1871.

CHAS. D. MARTIN.

Testimony taken before Henry W. Bishop, master in chancery, *taken* October 25th, A. D. 1884.

Present: Mr. Pope, for complainant; Mr. Culver, for defendant.

F. G. BOURNE, a witness on behalf of the complainant, being examined in chief by Mr. POPE, deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. F. G. Bourne; residence, 25 West 23d St., New York.

Q. Were you acquainted with Edward Clark in his lifetime?

A. Yes, sir.

Q. What business relations did you sustain to him, if any?

227 A. I was his accountant.

Q. Were you personally acquainted with him and his family at that time?

A. Yes, sir.

Q. Do you know how many children Edward Clark had during his lifetime?

A. Yes, sir.

Q. How many?

A. He had two children, to my certain knowledge.

Q. Give their names.

A. Ambrose J. Clark and Alfred Corning Clark.

Q. Is Ambrose J. Clark living now?

A. No, sir.

Q. When did he die?

A. I don't know the date.
Q. Is Edward Clark now living?
A. No, sir.
Q. When did he die?
A. October 14, 1882.
Q. Did Ambrose J. Clark die before or after Edward Clark?
A. Before.
Q. Was Ambrose J. Clark at the time of his death married?
A. No, sir.
Q. Had he ever been married?
A. Not that I know of.
Q. Would you have known it if he had been?
A. Yes, sir.
Q. Where does Alfred Corning Clark live?
A. Cooperstown, New York.
Q. Have any residence in New York city?
A. Yes, sir.
Q. Where?
A. No. 7 West 22d St.
Q. What relations do you sustain to him, if any?
A. Agent.
Q. How long have you been his agent?
A. Since his father's death.
Q. How many times was Edward Clark married during his lifetime?
223 A. Only once that I know of.
Q. Is his wife living or dead?
A. Dead.
Q. When did she die—before or after Edward Clark's decease?
A. Before.
Q. With the exception of Alfred Corning Clark, are there any other children of Edward Clark, deceased, or descendants of any deceased children—child or children?
A. Not that I know of.

Cross-examination by Mr. CULVER:

Q. How do you know Edward Clark died Oct. 14th, 1882?
A. Because I was there at the time of his death.
Q. Where did he die?
A. Cooperstown, New York.
Q. Did you see him after his death?
A. Yes, sir.
Q. How do you know that Edward Clark had but two children—Ambrose J. and Edward Corning Clark?
A. That is all I knew of.
Q. Might he not have others and you not know it?
A. He might.
Q. Of your own knowledge you don't know those were the only children he ever had?
A. Yes, sir.
Q. You mean you do know of your own knowledge?

A. I mean from my intimate relations with the family I would be likely to know if there had been other children.
Q. That is the only means you have of knowing?
A. Yes, sir.
Q. How old was Edward Clark at the time of his death?
A. About the time of his death——
Q. How long have you been his book-keeper?
A. About eighteen months.
Q. Prior to his death?
A. Yes, sir.
229 Q. Did you know his wife?
A. Yes, sir.
Q. When did she die?
A. I don't remember the date; it was about 1874.
Q. How long had you been acquainted with Edward Clark before he died?
A. Since 1873.
Q. Do you know how old Ambrose J. Clark was when he died?
A. No, sir.
Q. Did you ever see Ambrose J. Clark?
A. Yes, sir.
Q. How old, in your judgment, was he?
A. He was about 42 or 43 years old when he died.
Q. What means have you of knowing he never was married during his lifetime?
A. I have no means.

Redirect examination:

Q. How long an acquaintance had you with Ambrose J. Clark during his lifetime?
A. I first met him in 1873; I don't remember when he died.
Q. Where was Ambrose J. Clark then living?
A. Cooperstown, New York.
Q. With his father?
A. Yes, sir.
Q. Were you or not frequently in the family of Edward Clark?
A. Yes, sir.
Q. Intimate relations with them?
A. Yes, sir; friendly.
Q. Did you ever hear any mention — the fact that Ambrose J. Clark had been married?
A. No, sir.
Q. Ever hear any of the family mention such a fact?
A. No, sir.
Q. Who was the heir of Ambrose J. Clark?

Objected to as being an illegal question, and question withdrawn.

Q. What became of the property of Ambrose J. Clark?

Objected to as immaterial.

A. It reverted to his father.

Q. How do you know?

A. From having charge of Mr. Clark's books and records
230 of the transaction. The property owned by Ambrose J. Clark went back to his father.

Q. Who attended to it when it went back to his father?

A. Mr. Clark's agent.

Q. Who was his agent at that time?

A. Mr. James Meehan.

Q. Who were you employed by?

A. Mr. Edward Clark.

Q. Did you office or not with Mr. Meehan at that time?

A. Yes, sir.

Q. In the same office with him?

A. Yes, sir.

Q. Do you know the fact the property that Ambrose J. Clark owned in his lifetime was possessed or used by Edward Clark after the decease of Ambrose J. Clark?

A. Yes, sir.

Q. Ever hear of any descendant of Ambrose?

A. No, sir.

Q. Ever hear of the family speak of any?

A. No, sir.

Signature waived.

Testimony taken before Henry W. Bishop, master in chancery; taken October 25th, A. D. 1884.

Present: Mr. Pope, Mr. Culver.

SAMUEL DANIELS, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. POPE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. Samuel Daniels.

Q. What is your business?

A. At the present time I am working for Mr. Danforth in the recorder's office.

Q. You are working in the recorder's office in connection with the abstracts?

A. Yes, sir; but not for the recorder's office.

Q. What was your business prior to the fire of October 9, 1871?

A. I was then posting tract indexes for Shortall & Hoard.

231 Q. How long have you been familiar with the records of the recorder's office of Cook county?

A. Sixteen years.

Q. What do you know about the destruction of the records of Cook county in the fire of October, 1871?

Objected to unless it is limited to the records of the recorder's office of Cook county.

Q. The records of the recorder's office of Cook county.

A. All I know about the destruction of the records is I saw them there on the Saturday preceding the fire, and about Tuesday following I went to the recorder's office and there were no records there at all; everything was supposed to be consumed.

Q. Did you see any debris of records there?

A. The ruins was a perfect blank; everything seemed to be burnt up.

Q. Do you know whether or not any records were saved from the destruction?

A. I do not.

Q. Did you ever hear of any of them having been saved?

A. I never did.

Q. Did you ever see any of them since the fire?

A. Never saw a particle of them.

Q. Has your business been such that if any had been saved there you would have been likely to know it?

A. Yes, sir; I certainly should; I was in a position to have known had there been anything of the kind.

Q. You have been engaged in the abstracts of title business since the fire?

A. Yes, sir.

Q. From your knowledge on the subject can you or can you not testify that the records of the recorder's office of Cook county were destroyed in the fire of October, 1871?

A. I could not.

Q. What is your opinion on the subject?

232 A. My opinion is the same as everybody's else opinion; there was not the least vestige saved of the records; that was well known.

SAMUEL DANIELS.

Testimony taken before Henry W. Bishop, master in chancery, Nov. 6th, A. D. 1884.

Present: Mr. Pope, Mr. Culver.

AUGUSTUS H. HOVEY, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. POPE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. Augustus H. Hovey; age, 54; residence, 753 Oakwood Boulevard.

Q. Where did you reside in January, 1882?

A. At Glencoe.

Q. Did you have any official position at that time in Glencoe?

A. I was president of the village of Glencoe.

Q. Do you refer to the village council?

A. The village council of the village of Glencoe.

Q. Were you president of the council of Glencoe January 3, 1882?

Q. How do you know?

A. From having charge of Mr. Clark's books and records
230 of the transaction. The property owned by Ambrose J. Clark went back to his father.

Q. Who attended to it when it went back to his father?

A. Mr. Clark's agent.

Q. Who was his agent at that time?

A. Mr. James Meehan.

Q. Who were you employed by?

A. Mr. Edward Clark.

Q. Did you office or not with Mr. Meehan at that time?

A. Yes, sir.

Q. In the same office with him?

A. Yes, sir.

Q. Do you know the fact the property that Ambrose J. Clark owned in his lifetime was possessed or used by Edward Clark after the decease of Ambrose J. Clark?

A. Yes, sir.

Q. Ever hear of any descendant of Ambrose?

A. No, sir.

Q. Ever hear of the family speak of any?

A. No, sir.

Signature waived.

Testimony taken before Henry W. Bishop, master in chancery; taken October 25th, A. D. 1884.

Present: Mr. Pope, Mr. Culver.

SAMUEL DANIELS, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. POPE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. Samuel Daniels.

Q. What is your business?

A. At the present time I am working for Mr. Danforth in the recorder's office.

Q. You are working in the recorder's office in connection with the abstracts?

A. Yes, sir; but not for the recorder's office.

Q. What was your business prior to the fire of October 9, 1871?

A. I was then posting tract indexes for Shortall & Hoard.

231 Q. How long have you been familiar with the records of the recorder's office of Cook county?

A. Sixteen years.

Q. What do you know about the destruction of the records of Cook county in the fire of October, 1871?

Objected to unless it is limited to the records of the recorder's office of Cook county.

Q. The records of the recorder's office of Cook county.

A. All I know about the destruction of the records is I saw them there on the Saturday preceding the fire, and about Tuesday following I went to the recorder's office and there were no records there at all; everything was supposed to be consumed.

Q. Did you see any debris of records there?

A. The ruins was a perfect blank; everything seemed to be burnt up.

Q. Do you know whether or not any records were saved from the destruction?

A. I do not.

Q. Did you ever hear of any of them having been saved?

A. I never did.

Q. Did you ever see any of them since the fire?

A. Never saw a particle of them.

Q. Has your business been such that if any had been saved there you would have been likely to know it?

A. Yes, sir; I certainly should; I was in a position to have known had there been anything of the kind.

Q. You have been engaged in the abstracts of title business since the fire?

A. Yes, sir.

Q. From your knowledge on the subject can you or can you not testify that the records of the recorder's office of Cook county were destroyed in the fire of October, 1871?

A. I could not.

Q. What is your opinion on the subject?

232 A. My opinion is the same as everybody's else opinion; there was not the least vestige saved of the records; that was well known.

SAMUEL DANIELS.

Testimony taken before Henry W. Bishop, master in chancery, Nov. 6th, A. D. 1884.

Present: Mr. Pope, Mr. Culver.

AUGUSTUS H. HOVEY, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. POPE, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. Augustus H. Hovey; age, 54; residence, 753 Oakwood Boulevard.

Q. Where did you reside in January, 1882?

A. At Glencoe.

Q. Did you have any official position at that time in Glencoe?

A. I was president of the village of Glencoe.

Q. Do you refer to the village council?

A. The village council of the village of Glencoe.

Q. Were you president of the council of Glencoe January 3, 1882?

A. I was.

Q. Were you present at a meeting of the council on that date?

A. Yes.

Q. Was Michael Gormley, one of the defendants, there at that time?

A. He was there.

Q. Do you remember the passage of an ordinance vacating certain streets in Gormley's Addition to Glencoe upon that day?

A. I do.

Q. Was Mr. Michael Gormley, one of the defendants, present at the time of the passage of the ordinance?

A. He was.

Q. Before the passage of the ordinance did any conversation take place between you and Michael Gormley?

Objected to unless the conversation took place in the meeting and after the council had convened—at and during the session.

233 A. There was.

Q. When did such a conversation take place?

A. During the session of the meeting.

Q. Of the council?

A. Of the council.

Q. Will you state such conversation—what you said to him and what he said to you—as far as you can remember?

Objected to because it does not appear to be relevant to this case.

A. I asked Mr. Gormley if any other parties owned the land adjoining, on or through which the streets passed, that he asked to have vacated. He replied that it was originally his farm, and he put the streets there, intending to sell it for house lots, but had not sold it, and now wanted the streets vacated that he might use it for farming purposes. I then asked him if there were other parties in interest owning the land or any of the streets that he wished vacated, and he said there was not.

Q. Was that before or after the passage of the ordinance vacating certain streets in Gormley's Addition to Glencoe on January 3, 1882?

A. Before.

Q. Was there anything said about any person being benefited or injured by the vacation of any of those streets?

A. As I have just stated, he said he was the only party in interest.

Q. I present you a paper purporting to be an ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe. Will you please look at it and state what it is?

A. I should presume it was a copy of the ordinance taken from the Glencoe books, but I don't know anything about it.

Cross-examination by Mr. CULVER:

Q. What was the date of the meeting you have been talking about?

A. I understand it to have been January 2, 1882.

234 & 235 Q. Are you certain about it?

A. Only from the records I have seen; I have not the village books here; I can't tell.

Q. I am asking about your memory about it.

A. That is my memory.

Q. Who were present at that meeting besides this Mr. Gormley?

Objected to as inadmissible, the record being the best evidence.

A. Mr. Fletcher, Mr. Sherwood, Mr. Daniels, and Mr. Law; I don't remember any more.

Q. Anybody present except these four you have named and this Mr. Gormley?

A. I could not tell without referring to the records.

Q. Do the records show the names of all the persons who were present?

Objected to.

A. The records show the members of the council who were present.

Q. It does not show anybody else, does it?

A. No, sir.

Q. It does not show whether the clerk was present?

Mr. POPE: All this is objected to.

A. The record would show whether the clerk was present.

Q. Do you remember whether there was a young man named Frank Schrawm present at that meeting?

A. I don't remember.

Q. Will you swear he was not?

A. No, sir; I think it is very probable he was there.

Q. Was any man by the name of Doetrich present at that meeting?

A. I could not tell.

Q. Will you swear there was not?

A. No, sir.

Q. Do you remember whether there was a man named Retzinger present at that meeting?

A. I could not tell.

Q. Is your memory very good about who was present at that meeting?

A. No, sir.

Q. Please state once more what you said to Michael Gormley, and give the very words that you said.

236 A. I asked Mr. Gormley if he owned the land and whether he owned all the land adjoining the streets that he desired vacated, and whether there was any other parties in interest, and he said that he owned the land and he never sold it, and there was no other parties in interest.

Q. Did he say what land he owned?

A. He said he owned all the land around the streets he asked to have vacated. I was very particular on that point.

Q. How did you happen to ask that question?
A. Because he asked for the vacation, and I wanted to know if there were any other parties interested.
Q. How did he ask for the vacation?
A. In the shape of a petition, coming in all fixed up ready to push through.
Q. Was that petition in writing?
A. That was an ordinance—in the shape of an ordinance.
Q. Who read the petition?
A. It was in the shape of an ordinance, all prepared ready to put through.
Q. Then, there was not any petition?
A. I call it a petition—an ordinance—the same thing.
Q. A petition is something to ask for, and an ordinance proclaims something done.
A. Then it was a petition.
Q. Who was that petition signed by, if anybody?
A. I don't remember.
Q. Did Michael Gormley sign it?
A. I could not tell you.
Q. Did you ever see anybody's signature to the petition for the vacation of those streets?
A. I don't remember that.
Q. Did you ever hear anybody read one?
A. I heard this petition read; I think it was read by Fletcher.
Q. What petition?
237 A. The petition asking for the vacation of certain streets.
Q. Did the clerk read it?
A. I think he did.
Q. Are you sure the clerk read the petition for the vacation of those streets as of anything else you have sworn to here to-day?
A. No, sir; Mr. Fletcher may have read it.
Q. Are you sure there was a petition presented by anybody?
A. Yes.
Q. Signed by anybody?
A. No, sir.
Q. For the vacation of these streets? Are you — sure of that as of anything else you have sworn to?
A. I don't remember about the signature; I remember it came up in the shape of a petition. I remember it was a little unusual because it was customary, and I always required, as far as I could, that anything of that kind should come up in the shape of a request and then be referred to a committee, but this was brought up in the shape of a petition, all ready to be pushed through that night, and it looked to me as though it was something they were in a hurry to get through, and it had to be looked after.
Q. Did you make any other remarks at that time in regard to this ordinance?
A. Only in the same line that I have referred to.
Q. To whom did you make the remarks?
A. To the counsel and to Mr. Gormley.

Q. What did you say?

A. I said to the council that, in my judgment, the matter should be referred to a committee; that it could not be passed that night.

Q. Did any other member of the council ask any question?

A. I think they did.

Q. Who at that meeting, previous to the passage of the ordinance?

A. I think that Mr. Law and Mr. Dennis made some re-
238 marks in regard to it; there was a rambling conversation.

Q. What did Law say?

A. I could not tell his words.

Q. To whom did he speak?

A. He spoke to Mr. Gormley.

Q. What did Mr. Gormley say?

A. He said it was all right, or some words to that effect.

Q. What did Mr. Dennis say?

A. I could not tell you.

Q. Who did he speak to?

A. The conversation took that form, a rambling form.

Q. Who did he speak to, if any one?

A. I think to Mr. Gormley.

Q. What did Mr. Gormley say?

A. Gormley explained that he owned the land.

Q. What land?

A. That he asked to have the streets vacated through.

Q. Did he say through?

A. He said through.

Q. What did he say?

A. He said he owned the land.

Q. He said he owned the land where he asked to have the streets vacated? Did he say anything else; didn't he tell you he owned the land where he asked to have the streets vacated?

A. He did.

Q. Did he tell you anything else than that?

A. He told me there was no other parties in interest.

Q. About what?

A. Owning the land; interested in the land where the streets were asked to be vacated; that was the point I was particular about.

Q. After the petition was read, as you said, what was done after the petition was read by Mr. Fletcher or the clerk—what was done?

Objected to because the records are the best evidence of what took place.

A. My memory is a motion was made that it *was* be carried, that it pass the council.

239 Q. Was the motion read or was it an oral motion?

A. I think an oral motion.

Q. What was the oral motion?

A. That the petition be granted.

Q. Was there an ordinance read at that meeting?

A. Yes.

Q. What was the ordinance, so far as these streets are concerned?

Objected to because it speaks for itself.

A. To have them vacated.
Q. Then there was an ordinance and a petition, was there?
A. An ordinance in the shape of a petition.
Q. An ordinance in the shape of a petition?
A. An ordinance is a petition coming up in that shape.
Q. Can you repeat what it said?
A. I cannot.
Q. Can you repeat a single word it said?
A. Yes.
Q. Give it as near as you can.
A. Vacation.
Q. Do you remember any other word in that petition or ordinance?
A. Streets.
Q. Go on.
A. I cannot go on with the petition.
Q. Can you give any more words than "vacation" and "streets?"
A. I am not disposed to.
Q. Could you if you were disposed to?
A. No, I don't want to.
Q. That is not the question. Can you give more words if you are disposed to?

Objected to.

Q. What did this petition contain?
A. As I understand it now, there was no petition; there was but one paper.
Q. Why do you now have a different understanding from what you had before?
240 A. Because I considered the paper that was presented a petition in the form of an ordinance; as I understand it now, it was not a petition but an ordinance; there was but one paper presented and that was in the form of an ordinance.
Q. To whom was this ordinance handed, if to anybody?
A. I think to the clerk; that would be the usual form; I don't remember,
Q. By whom?
A. I think Mr. Fletcher presented it.
Q. To the clerk?
A. I think he presented it to the clerk; he may have asked to read it himself.
Q. Was Mr. Fletcher a member of the council?
A. I think so.
Q. Was this Mr. Fletcher Archibald W. Fletcher, who was a member of the council?
A. Yes; the Fletcher I referred to as Archibald W. Fletcher.
Q. Do you remember whether any other member of the council than Mr. Law and Mr. Dennis made any remarks?
A. I do not.

Q. Are you not the Augustus H. Hovey who was present at the foreclosure of this property prior to the passage of this ordinance, and bought some of the property that was mentioned in the deed of trust?

Objected to as incompetent cross-examination.

A. I never bought any property, to my knowledge; and, further, I did not know any of it had been sold.

Q. Are you not the same Augustus H. Hovey who was present on the 10th of September, 1878, in front of the Board of Trade building, when Adolph Loeb, trustee, made the sale of property under the trust deed from Morton Culver and wife and Michael Gormley and wife, to different parties; and are you not the same Augustus H. Hovey who bid off some of the property which was located in
241 block 2 of Culver & Johnson's Addition to Glencoe?

Objected to as before.

A. I was at the sale about five minutes, I presume, at that time, and bought one lot of land fronting on an avenue that has nothing to do with the land through which vacation was made (to my knowledge), and at no time since did I know that that lot of land I bought has had anything to do with this property.

Q. Who sold the property?

A. Loeb.

Q. Adolph Loeb was the crier?

A. I think so.

Q. Didn't he read the trust deed?

A. I didn't hear it.

Q. Didn't he read a notice?

A. I didn't hear it.

Q. Did you bid on any of the property?

A. I did.

Q. Wasn't some struck off to you?

A. There was one lot struck off to me.

Q. Was that Sept. 10, 1878?

A. I presume so; I don't remember the dates; I bought but one little lot, but to my knowledge it hadn't anything to do with this property.

Q. It fronted on South avenue?

A. I think so; that never was vacated.

Q. The lot you bought fronted on that avenue?

A. I presume so; I could tell by looking at the map.

Q. In block 2 of Culver — Johnson's Addition?

A. I don't remember.

Q. Do you remember between what streets it was?

A. I couldn't tell you; I could tell you if you showed me the map.

Q. Between what streets was this lot that you bought?

A. I should think between Grove and Greenwood.

Q. It was on the south side of South avenue, fronting north?

A. Yes.

Objected to because it speaks for itself.

A. To have them vacated.
Q. Then there was an ordinance and a petition, was there?
A. An ordinance in the shape of a petition.
Q. An ordinance in the shape of a petition?
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Q. Could you if you were disposed to?
A. No, I don't want to.
Q. That is not the question. Can you give more words if you are disposed to?

Objected to.

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Q. Why do you now have a different understanding from what you had before?
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A. I think so.
Q. Was this Mr. Fletcher Archibald W. Fletcher, who was a member of the council?
A. Yes; the Fletcher I referred to as Archibald W. Fletcher.
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Objected to as before.

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A. There was one lot struck off to me.

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Q. The lot you bought fronted on that avenue?

A. I presume so; I could tell by looking at the map.

Q. In block 2 of Culver — Johnson's Addition?

A. I don't remember.

Q. Do you remember between what streets it was?

A. I couldn't tell you; I could tell you if you showed me the map.

Q. Between what streets was this lot that you bought?

A. I should think between Grove and Greenwood.

Q. It was on the south side of South avenue, fronting north?

A. Yes.

Redirect examination:

Q. When you speak of a petition or of an ordinance being embodied in a petition, what do you refer to?

242 A. I have referred to an ordinance being presented in the form of a petition, as I understood it.

Q. Was there more than one paper presented?

A. There was only one paper which was presented in the form of an ordinance or drawn up and asked to be passed. The one I refer to when I refer to the petition, I mean——

Q. Whatever paper was presented?

A. The paper presented, I understood, was a paper to pass the ordinance—to pass it as an ordinance.

Q. Was there more than one paper presented to be passed that year?

A. Not that—referring to that vacation.

Q. Then, if the paper you speak of was an ordinance, that is what you mean, isn't it?

A. Yes, sir.

Q. But there was not two separate papers, one a petition and one an ordinance?

A. No, sir.

Q. Are you certain this meeting was held January 2d or January 3rd?

A. I could not remember. I have no minutes of it; only from the record.

Q. It was either January 2d or 3rd?

Objected to as leading.

A. I should refer to the records for that.

Q. You have spoken of Mr. Gormley's telling you that he was the owner of the land where the streets were vacated. By that do you mean land on which streets stood or constituted the streets themselves or not?

Objected to as leading and improper.

Objection overruled. Exception by defendant.

A. I mean that Michael Gormley stated that he owned the land through which the streets were made.

Q. When you use the expression "land through which the streets were made," state the position, as regards the streets, of the

243 land you refer to?

Objected to as before.

A. I do not know that I comprehend the question exactly.

Q. Was the land adjacent to the streets or not?

Objected to as before.

A. It was adjacent and bordering upon the streets.

Objected to.

Q. Bordering upon the streets?

Mr. CULVER: Did you say so to Mr. Gormley?

A. I asked Mr. Gormley whether he owned all the land abutting those streets asked to have vacated. Mr. Gormley said that he did.

Q. Is that just what you said and just what he said?

A. Yes.

Mr. POPE: Can you remember the exact words or the substance?

A. I remember the substance; of course, I don't pretend to remember the exact words.

AUGUSTUS H. HOVEY.

Testimony of Frank C. Smith, taken before Henry W. Bishop, master in chancery, on the 6th day of November, A. D. 1884.

Present: Mr. Pope, for compl't; Mr. Culver, for def't.

Witness examined in chief by Mr. POPE:

Int. 1. Please state your name, age, residence, and occupation.

A. Frank C. Smith; residence, Chicago; business, real estate.

Q. Do you know the defendant, Michael Gormley?

A. Yes.

Q. Have you ever had any conversation with him prior to the commencement of this suit in regard to the land in controversy?

A. Yes.

Q. Where?

A. In Glencoe.

Q. With the defendant, Michael Gormley?

A. Yes.

Q. State what the conversation was.

244 A. I asked him if he was willing to give us a lease on the land owned by the Clark estate, in Glencoe.

Q. The Clark estate, or Alfred Corning Clark?

A. Alfred Corning Clark; he said, "No;" not just then. I asked him after that if he would not come to the office and see if we could not make some arrangement about the land. He said he would. I asked him when he thought he could come down. He said, "In a few days," and spoke further about the lease. He said he didn't want to sign any lease, or something of that kind, as he had some rights there of his own that he could not give up or sign away, and I asked him what those rights were. He said he still owned or had an interest in the streets and alleys in Gormley's Addition to Glencoe. I asked him how that happened—what kind of an interest it was. He said that he never had signed away his interest in the streets and alleys. I told him that I thought he had in making this trust deed to Loeb. He said, "No;" he had never signed any paper giving up his interest in any way. I then said that I had understood there had been some action by the village council of Glencoe looking towards vacating the streets and alleys. He said, "Yes;" there had been some action. I asked him what they were doing about it at that time. He said he proposed to see if he could not get these streets and alleys vacated, as they were his.

A. I did not of Mr. Gormley, though.

Q. Did Mr. Gormley make any answer to any question that you asked in that council meeting prior to the passing of the ordinance?

A. I don't think I asked Mr. Gormley a question that evening, but possibly I might.

Q. The question is, Did Mr. Gormley make an answer to any question which you asked with reference to this ordinance for the vacating of these streets?

A. I don't think he did.

Q. That is your best recollection?

A. That is my best recollection. I don't think I asked Mr. Gormley a question in regard to it; if he did make answer in reply to somebody's else's question——

Q. Your question?

A. Not to my question.

248 Q. State, as near as you can, what Augustus H. Hovey said in reference to this ordinance for the vacation of the streets in Gormley's Addition?

A. It was some remarks about the council being careful what they were doing, or something of that kind; I don't know just the words.

Q. Give the gist of what he said, as near as you can remember?

A. I should think that was the gist of what he said.

Q. Repeat it.

A. That the counsel should be careful in vacating streets, or something of that kind, in regard to business to be done in a hurry.

Q. Didn't he ask Mr. Gormley whether he owned the land over which these streets passed?

A. I think he did.

Q. Are you sure about that?

A. I am sure about it.

Q. Didn't he ask Mr. Gormley whether he did not own all the land through which the streets run? Give the best of your recollection.

A. I can't recollect whether he put in the word "all" or not; but he asked the question if Mr. Gormley owned the land through which the streets run.

Q. Did he ask any other question?

A. I would not swear that he did.

Q. That is your best recollection?

A. That is my best recollection.

Q. Did any other member of the council ask Mr. Gormley any question?

A. I think Mr. Law did; that is my recollection.

Q. Did Mr. Dennis?

A. I don't remember Mr. Dennis did. I remember Mr. Law asking a question.

Q. Before the passage of the ordinance?

A. Before the passage of the ordinance.

Q. And in the regular council meeting?

A. In the regular council meeting.

Q. Who else were present at that meeting at which you heard this conversation besides yourself, Mr. Gormley, and Mr. Hovey?

249 A. Mr. Law was present, Mr. Fletcher was present, Mr. Day was present, and a man that lives at Dr. Nutt's was present.

Q. What is his name?

A. Schram, I think.

Q. What is his first name?

A. I don't know.

Q. Was one — the Dietrich boys there?

A. I should presume there were; there were several there I know.

Q. How did this conversation come up between Hovey and Gormley? What was the occasion for it?

A. The occasion was the passage of the ordinance vacating some streets.

Q. When did you first see the ordinance?

A. In the room where it was produced.

Q. In whose hands?

A. I think it was Mr. Gormley's hands I first saw it.

Q. During that meeting?

A. Yes.

Q. Are you as sure of that as of anything else you have sworn to?

A. Yes; I am sure of that?

Q. You are sure of it?

A. Yes, sir; I want to explain now. I would not swear positively that it was in Mr. Gormley's hands at that moment.

Q. At that meeting?

A. I think it was at that meeting.

Q. That is what I am talking about. I asked you where you first saw this ordinance; in whose hands during this meeting.

A. Now, I am here to tell just what I understood and what I done. I am not here to gibe one way or the other; only as I know the ordinance was there——

Q. Save your speech and answer the question.

A. I am not to swear to what I don't know. I am not to be

250 bought nor sold; but I know it was at the meeting, and I know there was an ordinance there and I think that the first time I saw the paper it was in Mr. Gormley's hands. That is my recollection; I think he produced it that evening.

Q. Are you as sure of that as of anything else you have sworn to?

A. Yes; I am just as sure of that as of anything.

Q. What next became of it after Mr. Gormley had it?

A. I think it went into the clerk's hands.

Q. Who gave it to the clerk?

A. I could not swear who gave it to him.

Q. Did you see Gormley do anything with the paper?

A. I think Mr. Gormley handed it to the clerk. I think he did; I don't know. It is so long ago I don't think it would come again, but my recollection is that the clerk read it.

Q. Was it before or after the reading by the clerk that the conversation between Gormley and Hovey occurred?

A. It was after the reading, but before the action was taken.

Q. Didn't Fletcher read this ordinance first to the council?
A. I think he did.
Q. Didn't Law?
A. I don't think he did.
Q. Didn't Law present it to the council?
A. He might possibly have presented it to the council.
Q. Are you as sure of that as of anything else you have sworn to?
A. I swear to what may be or might be.
Q. Tell us the fact, not what may be or might be.
A. I tell you, as I did before, I don't know positively who presented it to the clerk.

Counsel for the complainant instructs the witness he has a right to make any explanation he sees fit, but to confine himself as near as he can to the questions asked.

251 Counsel for defendant says, "All right; go ahead."

Redirect examination:

Q. Look at the document which I hand you, which the master will please mark "Sherwood Exhibit A," and state what it is, and whether you have ever seen it before.

Objected to because the paper shows for itself.

A. I don't know I ever saw it before.
Q. I will ask you if this is not the document which you saw there in the hands of one of the counsel or in the hands of the defendant, Michael Gormley?

Objected to as leading.

A. That is it in substance, but I cannot say I heard all the streets and alleys' names read. The substance was, as I have stated to you here, the vacation of streets in Gormley's Addition, as I remember.
Q. What is the best of your recollection as to whether the document which you saw was in the hands of Mr. Gormley or in the hands of one of the council when you first saw it?
A. My recollection is it was in the hands of Mr. Gormley when I first saw it, as I stated before.
Q. May it or may it not have been either before or afterwards in the hands of one of the council?
A. It might have been.

Objected to unless he answers the previous question.

A. I can explain one peculiar feature in regard to myself, while I do not intend to deviate in regard to what was done there by any person. The explanation is this: that my family were very sick at the time and it was necessary for me to be at home. While I was there, at that hour, *and* my mind was fully occupied with my own affairs at home; so such things may not at that time have
252 been as fully recollected as they would be at other times. Mr. Culver and Mr. Gormley know what the condition of my family was at that time.

Q. Are you positive as to the substance of the conversation which took place by Michael Gormley and by Mr. Hovey?

A. Yes.

Q. When the statements were made by Michael Gormley did he state that he was the owner of the land upon which the streets lay or bordering or adjacent to the streets?

A. He stated just as I stated in the question asked before and as I drew the inference, and, as I understand it to-day, there was no one else interested, as I told you.

Q. In the land vacated by the vacation?

A. Yes, sir.

Counsel for defendant moves to strike out the last question as leading and putting the answer in the mouth of the witness.

Q. You state Mr. Law said something at that meeting. Can you give the substance of what he said?

A. He asked some question in effect—as near as I can recollect, Mr. Hovey asked if any one else was interested in the property abutting the streets that were to be vacated.

Q. Through which or on which the streets were?

Objected to.

A. As I understood it, "through and on" mean the same thing.

Objected to.

A. I understand in that connection in which they were employed they were the same thing.

Q. Do you mean the very land on which the streets were located or the land adjacent to the streets and bordering upon the streets?

Objected to because the witness is asked what he understands and not what was said or the gist of what was said.

253 A. I should answer that as I did in regard to the words "on and through." You cannot have a street run through certain land unless another person might employ it as being on and adjacent to.

Q. Might not that document, which is marked "Sherwood Exhibit A," have been the document in Mr. Gormley's hands at the time?

A. It might have been.

Mr. CULVER: And might not have been?

A. And might not have been.

PORTER N. SHERWOOD.

JAMES J. DENNIS, a witness on behalf of the defendant, whose testimony was taken on the 6th day of November, A. D. 1884, before Henry W. Bishop, master in chancery.

Present: Mr. Pope, for compl't; Mr. Culver, for def't.

Examined in chief by Mr. POPE:

Int. 1. Please state your name, age, residence, and occupation.

A. James J. Dennis; residence, Glencoe.
Q. Did you reside in Glencoe, Cook county, January 3, 1882?
A. Yes.
Q. Did you have any connection with the council of the village of Glencoe at that time?
A. Yes; I was a member of that board then.
Q. Do you remember of the passage of an ordinance vacating streets in Gormley's Addition to Glencoe January 3, 1882?
A. Yes.
Q. Were you present at the time of the passage of the ordinance?
A. I was.
Q. Was Michael Gormley present at that time?
A. Yes.
Q. Do you remember any conversation that took place at that time prior to the passage of the ordinance by Michael Gormley and others?

Objected to.

A. Yes, sir.
254 Q. You may state such conversations.

Objected to unless it was conversations in the regular council meeting and before the supposed passage of this ordinance and in response to a question or questions by members of the council.

A. Mr. Gormley presented the ordinance. Frank Law sat next to me on the left. He asked me if anybody else was interested in the property which those streets abutted. He replied, "No." Then Mr. Hovey, as president of the council—he was in the chair—asked him if Mr. Culver or any one else was interested, and he said, "No." Then it was put to the vote of the council and it was unanimously voted to grant the ordinance.
Q. Are you stating the substance or the exact words?
A. I am stating the words, as near as I remember.
Q. Do you remember the exact words, or are you stating the substance of what took place?
A. I am stating the substance.
Q. When did such conversation take place—how long prior to the passage of the ordinance?
A. The night of the passage of the ordinance.
Q. How long prior to the passage on that night—just before or not?
A. Just before.
Q. Did the president, Mr. Hovey, say anything to the board which you remember?
A. No, sir.
Q. Prior to the passage of the ordinance, in regard to any care to be exercised by the council in passing such ordinance?
A. Nothing that I remember. He merely asked Mr. Gormley if Mr. Culver or any one else was interested?

255 Cross-examination by Mr. CULVER:

Q. Is your memory pretty good on this question?
A. I think so; yes.
Q. You feel quite positive that what you are saying is actually what occurred that evening?
A. Yes.
Q. Now state, if you please, the exact words that Mr. Hovey used, and Mr. Gormley, if you can.
A. I don't know as I can give you the exact words.
Q. Give them as near as you can, and all that Hovey said.
A. He merely asked Mr. Gormley if Mr. Culver or any one else was interested in the vacation of the property, which would be interested in the vacation of that abutting property, which would relate to that.
Q. State exactly what was said.
A. I don't know exactly, but that was the substance of it; he wanted to know if anybody else would be interested in the vacation—if it would touch anybody else.
Q. Did he say or "touch anybody else?"
A. No, sir; not that I remember; just wanted to know if anybody else was interested in it.
Q. Your memory is pretty good on that?
A. Yes; I think it is pretty good.
Q. Where did you see that ordinance first that night?
A. I didn't see it at all.
Q. Didn't see it at all?
A. No, sir.
Q. Was there any petition presented by Mr. Gormley that night to the council?
A. He presented the ordinance.
Q. To whom did he present it?

256 A. Whether he gave it to John Day, the clerk, who was sitting at the right of Hovey, I don't remember. He got up and handed the ordinance, but whether he gave it to Day or the president I don't remember.

Q. Are you not quite sure he gave it to Fletcher?
A. No, sir.
Q. Are you sure he gave it to Law or the clerk?
A. He didn't give it to Law; he was sitting next to me.
Q. He must have given it to the clerk.
A. I could not say.
Q. Do you know he gave it to anybody?
A. He brought it in himself.
Q. Did you see him bring it in?
A. I saw him get up and hand it to one of them.
Q. Did he make any request to the council?
A. Not that I remember.
Q. You were there?
A. Yes.
Q. You would have heard it if he had?

A. I should think so.

Q. Are you not quite positive you saw all this? Is not your recollection about this matter pretty clear?

A. Yes.

Q. You have talked this matter over several times, haven't you?

A. Not that I remember.

Q. Have you talked it over with Hovey?

A. No, sir; have not said a word to Hovey.

Q. With Sherwood?

A. We talked a little about it out in the hall. I had a headache and didn't want to talk this afternoon.

Q. Did you ask any questions?

A. No, sir.

Q. You voted for the ordinance, I suppose?

A. Yes.

Q. Didn't Mr. Hovey ask Mr. Gormley whether he did not own all of the land through which these streets run, and whether or not other persons were interested in it, and who were the council, and they ought to be very careful about vacating streets; that it ought to be referred to the committee and laid over until the next council meeting?

A. No, sir.

Q. He didn't say anything of that sort, did he?

A. No, sir.

257 Q. If he swears to that, in your judgment, he swears to what did not occur?

A. I don't remember of his cautioning the council that evening.

Q. Did you hear him ask Mr. Gormley whether he didn't own the land on both sides of the streets?

A. I don't remember hearing him ask any such question.

Q. Your recollection is pretty clear on that subject?

A. I think so. We called another meeting very soon after to reconsider the motion, and that kept the matter in my mind. I think I should remember that meeting. I ought to have known better than to have voted for the passage of the ordinance. I ought to have known better. I saw the mistake right afterwards.

Q. Didn't Mr. Sherwood ask some questions at that meeting?

A. I don't remember of his asking any questions.

Q. Who else was present at that meeting besides yourself, and John Day, and Michael Gormley, and Augustus H. Hovey, Francis B. Law, and Porter M. Sherwood, and Archibald W. Fletcher that you remember of?

A. I don't remember of anybody else being present that night.

Q. Wasn't John Feld present, and was there not a young fellow, Scharam, there?

A. I should not wonder; he is generally there.

Q. Were not two or three of the Dietrich boys there?

A. There was not many at the meeting; very few.

Q. Wasn't the street commissioner, Elias Retzinger, present at that meeting?

A. I could not say.

Q. Would you swear he was not?

A. No, sir.

Q. Did Mr. Gormley make any address to the council and ask them to vacate those streets?

A. Not that I remember.

Q. You would have heard it if he had.

A. I think so; I could not help it.

258 Q. Did you see any petition or hear any petition read or hear of any petition asking for the vacation of streets signed by Michael Gormley or any other person?

A. I don't remember of any; no, sir.

Q. What do you mean—you don't remember whether you saw it, or that you don't remember whether there was any?

A. I don't remember hearing any read before for the vacation of streets.

Q. What is your best recollection about it—that there was or was not?

A. That there was not.

Redirect examination:

Q. You don't pretend to give the exact language of what Hovey said on that occasion?

A. No, sir; the best of my recollection.

Q. Would you or would — not swear positively that he did not in substance ask of Mr. Gormley if any one else was the owner of land through which the streets passed?

A. I could not swear Mr. Gormley asked him any such question.

Q. Could you swear positively that Mr. Hovey did not ask Mr. Gormley such a question as that?

A. No, sir; I could not swear to it.

Q. Then he may have asked such a question as that, for aught you remember?

A He may have, but my recollection is there was very little said that evening.

Q. Would you remember as the substance of what was said, namely, as to whether any one was affected but Gormley by the passage of the ordinance?

A. Yes, sir.

Q. But you do not pretend to give the exact words of the conversation that took place?

A. No, sir.

Q. May it not be possible that Mr. Hovey on that day
259 spoke to the counsel [council] about being careful as to the passage of ordinances of this kind?

Objected to as being immaterial what Hovey said unless he said it prior to the supposed passage of this ordinance.

A. I think not.

Q. But you could not positively swear that prior to the passage of the ordinance he may not have spoken to the council about exercising care in the passage of such an ordinance?

A. No, sir.

Cross-examination resumed:

Q. You would probably remember it if he did?

A. I should think so.

Q. You would probably remember, too, whether Hovey asked such a question as Pope has propounded to you, if any such question was asked, wouldn't you?

A. Yes, sir.

Q. What did Mr. Gormley — in response, if anything, to the question by Hovey?

A. Merely said "no."

Q. Is it likely, if Mr. Hovey had made any such remark as that, the council ought to be careful before it passed any such ordinance, and that it ought to be referred to a committee and laid over to the next meeting, or anything of that sort, that you would have voted immediately on the passage of the ordinance?

A. I think I should have voted to have it referred to a committee.

Q. That would have been natural?

A. Yes, sir. There was no hurry about voting the ordinance. I should have had it referred; of course we always do.

Q. Did anybody else make any representations in behalf of Michael Gormley at that meeting prior to the passage of the ordinance than what you have stated?

A. Prior to that evening there was somebody else spoke to me several times.

260 Q. I say that evening in the council prior to the passage of the ordinance.

A. No, sir.

Q. Nobody else did.

A. No, sir.

Mr. POPE: Who was it that spoke to you prior to that evening?

Objected to as immaterial.

A. A. W. Fletcher.

Q. Who is A. W. Fletcher?

A. He was a member of the board then.

Q. What did he say?

Objected to as immaterial, irrelevant, and incompetent.

A. He spoke to me—it must have been, probably, a month before, and he spoke to me three or four times between that and when the ordinance was brought in—asking me if I did not think it a good thing to have these streets of Gormley's vacated and closed, as it would be a saving to the village in repairing sidewalks; that they were only going to rot and do nobody any good, and if they were vacated the village would be at that much less expense. I told him probably it would be a good thing and I would think of it. He spoke to me two or three times. He never did anything until this ordinance was brought in.

United States Circuit, Northern District of Illinois.

ALFRED CORNING CLARK
vs.
THE VILLAGE OF GLENCOE.

To Morton Culver, Esq., William H. Condon, Esq., and N. F. Fitch, Esq., solicitors for defendants.

GENTLEMEN: In pursuance of the order of reference in the above case, I have appointed Saturday, the tenth day of January,
261 A. D. 1885, at 10 a. m., at my office, room 88 Custom-House building, Chicago, Illinois, for the taking of evidence in the above-entitled case, and you are requested to be present.

JOHN I. BENNETT, *Master, &c.*

January 8, 1885.

Left copy at office of above council at 10 a. m. of the 9th; del'v'd to Culver and Condon in person.

In pursuance of the foregoing notice, appeared before me, Jan. 10th, 1885, Charles R. Pope and Morton Culver, counsel for the parties.

JOHN L. DAY was recalled; examined in chief by Mr. POPE, testifies:

Q. Mr. Day, have you the records of the proceedings of the president and council of the village of Glencoe with you?

A. Yes, sir—that is, I have volumes 2 and 3 of the records of the council.

Q. Have you the book of ordinances of the president and council of the village of Glencoe with you?

A. Yes, sir.

Q. Will you please look at the papers marked "Day Exhibit A," "Day Exhibit B," "Day Exhibit C," "Day Exhibit D," and "Day Exhibit E" and state, after looking at the records of the village, upon what pages and parts of pages of such records the proceedings purporting to be shown upon said exhibits are contained? I want you to give me the lines and pages.

A. Well, it would take me considerable time to go over this matter and compare the record with it. Can I have any assistance in the matter? If you will read to me—I cannot say under oath that the matter on these exhibits is the same as in the records without comparing them.

Q. If it will take you some time will you please, at your
262 leisure, examine the records of these exhibits and be ready to answer these questions this afternoon at four o'clock?

A. Yes, sir.

Q. Are any of the ordinances which are purported to be shown upon these exhibits and the proceedings in regard to the ordinances shown in your ordinance book?

A. The exhibits apparently show the ordinances, or matter that

was passed as ordinances in the preparatory steps to becoming a complete ordinance—the first for the vacation of a part of Adams avenue in Gormley's Addition to Glencoe, and the second one——

Q. In regard to the first ordinance, is that shown on your book of ordinances?

A. No, sir.

Q. Why not?

A. It was vacated before the writing up of the book of ordinances.

Q. Was there any ordinance book at that time?

A. Yes, sir.

Q. Was it written up at that time?

A. Well, it is kept in the clerk's office. It is very seldom used, and it is written up at intervals, as the clerk has time and opportunity and sees fit.

Q. State why the first ordinance that you have mentioned was not written in the ordinance book.

A. On account of its vacation I considered the book of ordinances should only properly contain ordinances living, and the ordinance having been vacated there is merely a note of its passage and vacation.

Q. Just show, please, on what page of the ordinance book this note that you speak of is contained.

A. On page 168 of the book of ordinances.

Mr. POPE: We offer in evidence the following portion of the ordinance book, on page 168, which reads as follows:

263 "92.

Ordinance for vacation of Adams avenue, in Gormley's Addition to Glencoe, passed October 4, 1881; posted October 7, 1881; repealed February 7, 1882, in volume 3, Minutes, page 7."

Objected to by counsel for defendant because there is no ordinance recorded in the book which is proposed to be offered, and it is therefore incompetent. The charter of the village of Glencoe provides that a book shall be kept in which all ordinances shall be recorded by the clerk, and such book shall be used in evidence; and, as it is offered in evidence as a portion of this ordinance book, number 93 of the ordinances is not in the book; therefore it is incompetent for anything except to show ordinances. Objection overruled. Exception by counsel for defendant.

Q. What is the next ordinance or resolution in regard to the matters in controversy shown on the exhibits?

A. An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

Q. Will you please state whether that ordinance is contained in your ordinance book; and, if so, upon what page?

A. It is not contained in the ordinance book. There is a memorandum of like effect as that that we have just passed.

Q. Why wasn't it transcribed into the ordinance book?

A. It never took effect. The proceedings necessary to make it an ordinance were never completed. It was vacated before such proceedings took place.

Q. Before the posting?

A. Before the posting; yes, sir.

Q. Will you please state what is mentioned in your ordinance book in regard to this ordinance last mentioned?

264 Objected to by counsel for defendant because there is no ordinance recorded in the book which is proposed to be offered, and it is therefore incompetent.

Objection overruled. Exception by counsel for defendant.

A. I will read just as it is here: "An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe, passed January 3, 1882; not posted; annulled January 24, 1882; annulled by ordinance passed February 7, 1882."

Q. This annulling ordinance passed February 7, 1882?

A. Yes, sir.

Mr. POPE: We offer the record of this ordinance in evidence as shown on the ordinance book.

Objected to by counsel for defendant for same reason as above.

Q. You will please turn to the next ordinance or resolution in regard to the matters in controversy, "Day Exhibit C."

Direct examination of JOHN L. DAY continued:

Q. You will please turn to the next ordinance or resolution in regard to the matters in controversy, Day Exhibit C, and state whether there is any mention upon the book of ordinances of the village of Glencoe kept by you of any proceedings purporting to be shown on Day Exhibit C.

A. No, sir; there is not.

Q. Why?

A. There were no proceedings in the council in the nature of an ordinance.

Q. Will you please turn to Day Exhibit D and state whether there appears upon the book of ordinances of the village of Glencoe kept by you any reference to any of the proceedings purporting to be shown on Day Exhibit D?

A. No, sir.

Q. Why not?

A. It was not considered in the nature of an ordinance, and at a subsequent meeting there was an ordinance passed which

265 rendered any proceedings taken at this meeting unnecessary—a regular ordinance to vacate the ordinances previously passed.

Q. Then what does appear upon the book of ordinances of the village of Glencoe relative to any ordinance or proceedings mentioned on any of these exhibits—Day Exhibits A, B, C, D, or E?

A. There appears on the book of ordinances a reference to the ordinance passed February 7, 1882—Day Exhibit E—vacating all

ordinances passed by the council which vacated or attempted to vacate streets or parts of streets in Gormley's Addition to Glencoe.

Q. When you say vacating do you mean annulling?

A. I would like to have the word vacating changed to annulling.

Q. Then the only references upon the ordinance book, as I understand, of the village of Glencoe, in reference to vacating any street or streets in Gormley's Addition shown or purporting to be shown, or any of the exhibits you have been questioned about, are those upon page 168, headed by the figures 93, and upon page 171, headed by the figures 97?

A. Yes, sir.

Q. How is it in regard to the vacation of Adams avenue?

A. That is referred to in the first—in number 93.

Q. Mr. Day, have you compared the exhibits, to wit, Exhibits Day A, B, C, D, and E, with the record of proceedings of the council of the village of Glencoe?

A. Identifying these present exhibits as the exhibits referred to—yes, sir.

Q. Are or are not the exhibits true copies?

A. They are true copies in substance—that is, they are true copies leaving out little minor corrections, such as "and in place of," "et," and similar small errors.

Q. State what the errors are.

A. In Exhibit A, where the exhibit says, "Absent—C. Dennis
266 Fehd," the record reads "Absent, C. Dennis and Fehd." On this record of October 4, 1881, Exhibit A, where the exhibit says, "Ayes—C. Fletcher, Law, and Sherwood," the record says, "Ayes—C. Fletcher, Law, *et* Sherwood;" Exhibit B, where the exhibit says, "Present—C. Fletcher, Law, Sherwood, and the president," the record says, "Present—C. Fletcher, Law, Sherwood, *et* the president;" and in the vote in the same exhibit, where the exhibit says, "Ayes—C. Dennis, Fletcher, Law, and Sherwood," the record says, "Ayes—C. Dennis, Fletcher, Law, *et* Sherwood," and on the following line, after "Noes—None," the words "to wit" should be inserted; Exhibit C, where the exhibit says, "Present—C. Dennis, Fehd, and the president, Hovey," the record says, "Present—C. Dennis, Fedh, Fletcher, and the president, Hovey;" where the exhibit says, "In Gormley's Addition to Glencoe be reconsidered; carried, ayes—C. Dennis, Fehd, and the president; no—C. Fletcher," the record says, "In Gormley's Addition to Glencoe reconsidered; carried, ayes—C. Dennis, Fehd, *et* the president; no—C. Fletcher;" and in the next clause, where the exhibit says, "Ayes—C. Dennis, Fehd, and the president," the record says, "Ayes—C. Dennis, Fehd, *et* the president." These are all the differences that I find.

Q. Will you please state on which pages and portions of pages of the records of the council the different exhibits are to be found?

A. Exhibit A is shown on vol. 2 of Minutes, page 279, lines 7 to 12, inclusive, and lines 35 to 37, inclusive, and on page 280, lines 1 to 22, inclusive.

Exhibit B is shown on volume 3 of Minutes, page 1, lines 8 to 12

inclusive, and 26, page 3, lines 39 to 42, inclusive; page 4, lines 1 to 30, inclusive.

Exhibit C is shown on volume 3 of Minutes, page 5, lines 1 to 9, inclusive, 13 to 21, inclusive, and lines 22, except the words
267 "the clerk," and lines 23 to 45.

Exhibit D is shown on volume 3 of Minutes, page 5, lines 32 to 35, inclusive; page 6, line 6, except the words "and respond*ent* to roll-call," and lines 11 to 16, inclusive.

Exhibit E is shown on volume 3 of Minutes, page 6, lines 20 to 23, inclusive, and page 7, lines 7 to 23, inclusive.

Mr. POPE: We offer the records of the meeting of the council just indicated by the witness in evidence. Copies of the same are hereto attached, marked, respectively, Day Exhibits "A," "B," "C," "D," and "E."

Q. Mr. Day, are there any other proceedings shown upon the records of the council of the village of Glencoe relative to the vacation or rescinding of any ordinance for the vacation of any street or streets of Gormley's Addition to Glencoe other than these that have been offered in testimony?

A. None by which any action was taken; there is a record of motion put and lost that is not shown on the exhibit, but nothing that would be considered as pertinent matter to the question at all.

Q. Will you please indicate upon the records the matter you have just referred to as being omitted?

A. "Councilman Sherwood presented a resolution for the repeal of ordinance for vacation of streets, passed January 3, 1882. After some discussion same was, with consent of second, withdrawn."

Q. Where is this entry that you have mentioned?

A. Page 6, volume, 3 of Minutes.

Q. Have you now produced and shown everything that is exhibited upon the records of the council relative to the vacating of any street or streets in Gormley's Addition to the village of Glencoe?

A. Everything in relation to these two ordinances. There was, after the date of these meetings that we have been referring to, proceedings in relation to the carrying on of the suit that
268 was brought on by Mr. Gormley; that, of coure, would come under the head of your question, but not in the sense asked for.

Q. What do you refer to?

A. The action of the council employing counsel in the suit brought by Mr. Gormley against the clerk.

Q. Is that the proceeding a record of which is already introduced in evidence in the superior court of Cook county against you as clerk, asking for a writ of mandamus?

A. Yes, sir.

Q. Were you present at the last election held for president and common council of the village of Glencoe, at the last election held?

A. Yes, sir.

Q. Do you know who is in possession at the present time of the premises in controversy?

A. Mr. Gormley.

Q. The defendant in this case?

A. Yes, sir.

Q. Michael Gormley?

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. Were you clerk at the time these ordinances were passed which you have mentioned in your Exhibits A, B, C, D, and E?

A. Yes, sir.

Q. Was it your business to record all ordinances passed by the council in the book of ordinances kept by the village?

A. Yes, sir.

Q. Then, if you have omitted any, it was your omission, was it not?

Question objected to by counsel for complainant because it is a conclusion of law. The witness has stated that he was custodian and the conclusion cannot be called for; it is a matter of opinion and law entirely.

Objection overruled. Exception by counsel for complainant.

A. I am, of course, guided in my action by the charter of the village and the rules and ordinances of the council, and in a
272 great many things I am left to my own discretion. At the time of writing up the book of ordinances these ordinances were annulled. I looked upon the book of ordinances as a book of reference as to ordinances that were enforced and laws existing, and these ordinances being nugatory, I omitted them. In regard to the ordinance for vacation of parts of Adams avenue, it could be properly called an omission on the part of the clerk. In regard to the second so-called ordinance, it never became an ordinance in point of law, and therefore has no place in the book of ordinances.

Q. That was your opinion when you omitted to transcribe the ordinance, was it, that this ordinance was not an ordinance in law?

Objected to by counsel for complainant, as it is a matter of opinion. Objection overruled. Exception by counsel for complainant.

A. It was the general opinion. I don't recollect any specific action that the council took in the matter or any suggestions made by the members of the counsel who were competent judges; but this matter was fully before them, and I have no doubt I was guided by their judgment in the matter.

Q. Was this so-called ordinance of January 3d, 1882, passed by the council for the vacation of streets in Gormley's Addition to Glencoe?

Question objected to by counsel for complainant, as it has been answered again and again and is improper cross-examination. I object because it has nothing at all to do with the controversy in this case,

and counsel for defendant cannot, as I understand, drag in matters of controversy in other cases. Objection overruled. Exception by counsel for complainant.

A. In making an answer to that question, if it please the court, I would like permission to explain in regard to the ordinance. I take it that the passage of an ordinance requires several things to be done, and when these things have been completed then it
273 is the duty of the clerk to spread an ordinance upon the book of ordinances. In the case of this present ordinance—the ordinance in question on which Mr. Culver has questioned me—it merely received the vote of the council. That is the first and great step. The next thing was that within a given time it should be posted. After having been passed a given time it would then become a law—would be an ordinance, in fact, of the village of Glencoe, and should then, of course, be spread upon the book of ordinances. Long before that time this ordinance was wiped out of existence, and it was never, in consequence, put upon the book of ordinances. I cannot answer yes or no to a question involving such an explanation.

Q. Does the council post the ordinance?

Question objected to by counsel for complainant. The charter provides just who is to post it, and the question is not competent. Objection sustained.

Q. Then the council voted for the passage of this ordinance, did it not, on the 3d day of January, 1882?

Question objected to because it has already been answered and because the record has already been offered in evidence.

The MASTER: The witness may state the date.

A. On the 3d day of January.

Mr. CULVER: Was there a vote in the affirmative of three-fourths of the members of the council of the village of Glencoe at that time?

Question objected to because it involves a question of law as to what constitutes three-fourths of the vote. Question withdrawn by counsel for defendant Gormley.

274 Q. On the 3d day of January, 1882, it passed the council of the village of Glencoe?

Question objected to because the record is the best evidence and no oral evidence is admissable.

Mr. CULVER: Find the records that show it and I will offer it in evidence.

A. I turn to the election returns of April 1, 1881. They show——

Objected to by counsel for complainant, as it is improper cross-examination.

Mr. CULVER: I propose to show that the ordinance book is defective.

Objected to as improper cross-examination. Objection overruled. Exception by counsel for complainant.

A. I find on page 245 of volume 2 of the Minutes of Proceedings of the Council——

Mr. Pope: I object to any conclusions. He may read, but he cannot state what his conclusions is as to the records. I ask that the record be read exactly as it is there.

A. (Reading.) "On motion of Councilman Culver, the election returns were then read. Councilman Sherwood moved that Augustus H. Hovey be declared elected president; that R. N. Sherwood, F. D. Law, J. F. Dennis, John Fehd, and A. W. Fletcher be declared elected councilman."

Q. Turn to January 3, 1882, and read that portion of the record of that meeting which shows what members of the council were present at that meeting?

Question objected to by council for complainant, as it has already been answered. Objection overruled. Exception by counsel for complainant.

A. "Present: Councilman Fletcher, Law, Sherwood, and the president, Hovey; absent, Councilmen Dennis and Fehd."

Q. State if you find in the record a further statement that some one of the council came in during the meeting. Read that
275 part of the record.

A. "Councilman Dennis here came in."

Mr. Pope: Is that in the exhibit?

A. Yes, sir; it is.

Mr. Pope: I object for the same reason above given.

Mr. Culver: Now read from the record of January 3, 1882, the statement preceding the copy of the ordinance which was passed for the vacation of certain streets and alleys in Gormley's Addition to Glencoe.

Question objected to by counsel for complainant. Objection overruled. Exception by counsel for complainant.

A. "Councilman Law read the following ordinance and moved its adoption. Motion carried by following vote: Ayes—C. Dennis, Fletcher, Law, and Sherwood; noes—none."

Q. You didn't record that ordinance in the ordinance book, did you?

Question objected to by counsel for complainant, as it has already been answered.

A. It not being an ordinance in the opinion of the clerk, it was not spread upon the ordinance book.

Q. You was clerk at the time, was you not?

A. Yes, sir.

Q. Did you record in the book of ordinances the resolution purporting to have been passed on the 24th day of January, 1882, made by Councilman Dennis and seconded by Councilman Sherwood, that the vote and action had at the last regular meeting to vacate certain

streets in Gormley's Addition to Glencoe be reconsidered and annulled; carried: ayes—C. Dennis, Fehd, and Sherwood; noes—C. Fletcher?

Objected to by counsel for complainant.

A. This meeting of January 24, 1882, was what is called a special meeting. The members of the council were summoned under
276 a by-law of the council by a printed form; part of them were not present, and it was claimed that they were not properly served with notice, and at a meeting held very shortly afterwards the action that was taken at this meeting of January 24 was gone over again in what they considered a legal and binding form and manner. This resolution was considered as not having amounted to anything, and under the advice of the members of the council I did not consider it or take any notice of it further than a full record of it on the minutes of the meeting.

Q. State whether or not you entered in this book of ordinances an ordinance purporting to have been passed on the 7th day of February, 1882, which reads as follows: "Be it ordained by the council of the village of Glencoe that any and all ordinances heretofore passed by this council vacating any streets or parts of streets in Gormley's Addition to Glencoe, or purporting so to do, are hereby repealed, and all the streets and parts of streets shown in the first and original recorded plat of said addition are hereby declared to be public streets. C. Fletcher moved to refer same to comm'e on streets and alleys. Lost. Ayes, C. Fletcher (1); nays, C. Dennis, Fehd, and Sherwood. C. Sherwood moved that the ordinance be adopted. Carried. Ayes, C. Dennis, Fehd, and Sherwood (3); nays, C. Fletcher (1)."

Question objected to by counsel for complainant.

A. I made the minute of it that I judged the action demanded. It was not spread in full; it was not an ordinance itself at the time, not having been spread upon the book of ordinances nor any of the ordinances referred to; but I wrote the minutes of it that I considered sufficient reference in the book of minutes, and the undoing of the passage of the ordinance.

Q. You were clerk, were you not, at that time?

A. Yes, sir.

277 Redirect examination by Mr. POPE:

Q. Was the petition of Michael Gormley, shown on Day Exhibit A, spread upon the records of the common council of the village of Glencoe?

A. No, sir; a minute of it simply.

Q. Where is the copy shown on Exhibit A taken from?

A. A certified copy I furnished the complainant's solicitor in this case.

Q. What was the certified copy taken from?

A. The files in my office; from the original instrument.

Before signing this deposition I desire to state, by way of expla-

nation, that the reference in the ordinance book to the ordinance in "Day Exhibit E" is as follows: "An ordinance for vacation of certain streets and parts of streets in Gormley's Addition to Glencoe. Passed January 3, 1882. Not posted.

Annulled January 24, 1882.

Annulled by ordinance passed February 7, 1882, and posted February 11, 1882."

This is contained in book of ordinances, page 171. I further desire to state that where on page 202 this exhibit represents me as reading from the records of the village of Glencoe "that R. N. Sherwood, F. D. Law," & others be declared, in this exhibit should show me to have read "P. N. Sherwood, F. B. Law," & others be declared, &c., such being the facts as shown by said records.

JOHN L. DAY.

Subscribed and sworn to before me this Feb. 12, 1885.

JOHN I. BENNETT, *Master, &c.*

278 "DAY EXHIBIT A"

GLENCOE, *Oct.* 4, 1881.

Regular meeting of the council at 7.30 p. m.

Present: C. Fletcher, Law, Sherwood, and the president, Hovey.

Absent: C. Dennis and Fehd.

* * * * * * *

Michael Gormley presented a petition praying that Adams avenue between Grove and Bluff Sts. be vacated.

C. Fletcher moved that the prayer be granted, and presented the below-given ordinance and moved its adoption to carry said petition into effect. The motion was carried and the ordinance adopted by the following vote:

Ayes—C. Fletcher, Law, *et* Sherwood (3); noes, none.

Said ordinance is as follows:

Be it ordained by the council of the village of Glencoe—

SECTION 1. That Adams avenue between Grove street and Bluff street, in Gormley's Addition to Glencoe, as recorded March 11th, 1874, in Book 7 of Plats, page 36, be, and the same is hereby, vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days.

Posted Oct. 7.

"DAY EXHIBIT B."

"JANUARY 3RD, 1882.

Regular meeting of the council at 7.30 p. m.

Present: C. Fletcher, Law, Sherwood, *et* the president, Hovey.

Absent: C. Dennis & Fehd.

* * * * * * *

279 C. Dennis here came in.

C. Law read the following ordinance and moved its adoption—motion carried by following vote: Ayes, C. Dennis, Fletcher, Law, *et* Sherwood; noes, none—to wit:

An ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

Be it ordained by the council of the village of Glencoe—

SECTION 1. That the following streets and parts of streets as laid out on a plat entitled Gormley's Addition to Glencoe, being a subdivision of the S. W. ¼ of section 7 and the W. ½ of the N. E. ¼ of the N. W. ¼ of section 18, being all in township 42, range 13, in Cook county and State of Illinois, and filed for record in the recorder's office of Cook county and State of Illinois March 11th, 1874, in Book 7 of Plats, page 36—

1. Washington avenue between Grove street and Bluff street and Washington avenue between Valley street and Prairie street.
2. Adams avenue between Valley street and Prairie street.
3. Jefferson avenue.
4. Madison avenue.
5. Monroe avenue.
6. Jackson avenue.
7. Bluff street between Adams avenue and Jackson avenue.
8. Valley street between Adams avenue and Jackson avenue.
9. Wood street between South avenue and Jackson avenue.
10. Prairie street between South avenue and Jackson avenue—

be, and the same is hereby, vacated.

SECTION 2. That this ordinance shall take effect and be in force from and after its passage and posting ten days."

280 "DAY EXHIBIT C."

"GLENCOE, *January* 12, 1882.

"Special meeting on call, signed by C. J. F. Dennis, Frank P. Law, & P. N. Sherwood, and the president, Hovey, for the purpose of taking such action as should be deemed advisable concerning the reconsideration of an ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe.

"Present: C. Dennis, Fehd, Fletcher, and the president, Hovey.

* * * * * * *

"C. Dennis moved that the vote of last meeting for the adoption of ordinance for the vacation of certain streets and parts of streets in Gormley's Addition to Glencoe be reconsidered. Carried. Ayes, C. Dennis, Fehd, *et* the president; no, C. Fletcher.

"C. Dennis moved that said vote be annulled, and that the ordinance referred to be referred to the comm'ee on judiciary to investigate. Carried. Ayes, C. Dennis, Fehd, *et* the president; no, C. Fletcher.

* * * * * * *

"C. Sherwood here came in. The clerk read the call, and, on motion of C. Dennis, the action of the council prior to his arrival was endorsed by C. Sherwood."

"DAY EXHIBIT D."

GLENCOE, *January 24th*, 1882.

"Special meeting of the council at 7.30 p. m.

"Present: C. Fehd, Fletcher, Sherwood, and the president, Hovey. Absent: C. Dennis *et* Law.

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"C. Dennis here came in.

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"C. Dennis moved, and C. Sherwood seconded the motion, 281 that the vote and action had at the last regular meeting to vacate certain streets in Gormley's Addition to Glencoe be reconsidered and annulled. Carried. Ayes, C. Dennis, Fehd, and Sherwood; nay, C. Fletcher."

"DAY EXHIBIT E."

"GLENCOE, *February 7th*, 1882.

"Regular meeting of the council at 7.30 p. m.

"Present: C. Dennis, Fehd, Fletcher, and Sherwood and the president, Hovey.

Absent: C. Law.

* * * * * * *

"The following ordinance was then presented and read:

"Be it ordained by the council of the village of Glencoe that any and all ordinances heretofore passed by this council vacating any streets or parts of streets in Gormley's Addition to Glencoe, or purporting so to do, are hereby repealed, and all the streets and parts of streets shown in the first and original recorded plat of said addition are hereby declared to be public streets.

"C. Fletcher moved to refer same to comm'e on streets and alleys. Lost. Ayes, C. Fletcher (1); nays, C. Dennis, Fehd, and Sherwood.

"C. Sherwood moved that the ordinance be adopted. Carried. Ayes, C. Dennis, Fehd, and Sherwood (3); nays, C. Fletcher (1).

"Posted Feb. 11."

282 "DAY EXHIBIT F."

Village of Glencoe.

People's Ticket.

For president:
Charles E. Brown.

For councilmen:
George Wells.
Henry Taylor.
John Beck.
Morton Culver.
Joseph Diedrick.

For assessor:
George Meagher.

For collector:
Frederick Schneider.

For street commissioner:
Henry Witt.

For marshal:
Ch'les Dennis.

For police magistrate:
John Nutt.

For police constable:
Frank Scharom.

283 FRED. SCHRAMM, a witness called on behalf of the complainant, duly sworn, examined in chief by Mr. POPE, testifies:

Q. Mr. Schramm, where do you live?
A. Glencoe; I have always lived there.
Q. How long have you lived there?
A. I was born there.
Q. How old are you, Mr. Schramm; what is your age?
A. I am 27.
Q. Were you present on January 3d, 1882, at a meeting of the common council of the village of Glencoe when an ordinance was passed for the vacation of certain streets and parts of streets of Gormley's Addition to Glencoe, being Washington avenue between Grove street and Bluff street; Washington avenue between Valley street and Prairie street; Adams avenue between Valley street and Prairie street; Jefferson avenue, Madison avenue, Monroe avenue, Jackson avenue; Bluff street between Adams avenue and Jackson avenue; Valley — between Adams avenue and Jackson avenue;

Wood street between South avenue and Jackson avenue, and Prairie street between South avenue and Jackson avenue?

Objected to by counsel for defendant because it assumes that an ordinance was passed at such time.

The master states that in all cases where objections are made to the introduction of evidence the rights of the parties objecting are reserved, so that the question may be brought up before the court.

Exception by counsel for defendant.

A. I was present at a meeting where they were vacated, but I don't know whether it was in January, but it was in 1882.

Q. The early portion of 1882?

A. Well, I couldn't tell.

284 Q. In the winter or spring?

A. Well, that I don't know; only I know that it was along in 1882; it was three or four years ago.

Q. At the time when you were present, when an ordinance was passed for the vacation of certain streets in Gormley's Addition to Glencoe, was Mr. Michael Gormley present?

A. Yes, sir.

Q. Do you remember of his making any statements prior to the passage of such ordinance or of any questions being put to him by any members of the council?

Objected to by counsel for defendant unless the conversation is confined to what happened during the meeting of the council of the village of Glencoe; objection overruled; exception by counsel for defendants.

A. Yes, sir.

Q. Will you please state what was said by Mr. Michael Gormley and what was said by the members of the council that you have referred to? Give the words as nearly as you can.

A. Mr. Hovey, the president, asked Mr. Gormley whether Mr. Culver owned any property in there; Mr. Gormley said no; then he asked whether anybody else owned any property in that addition or was interested there, and Mr. Gormley said no, nobody but himself had anything to say there. He wanted to get it all back into the farm again; the people drive through there, through the place, and annoy him a good deal, and he said that there was a lot of poor sidewalk there, and it would cost the village a good deal to get it repaired, and the village would save money by vacating the streets so that he would get back into the farm. That is all he said, and about all I remember of it.

Q. When did this conversation take place, before the passing of the ordinance—that is, before the council acted?

285 A. Well, it was right before the ordinance was put.

Q. Were the council in session at the time when this conversation took place?

A. Yes, sir.

Q. Do you remember any other particulars in regard to the conversation of how the parties were standing?

A. I don't just remember, but I know they hesitated quite awhile and thought it over and didn't know what to do.

Q. Do you refer to the common council when you say they hesitated?

A. The common council looked at one another and didn't know what to do; they looked at one another; they thought Mr. Gormley's word was good.

Q. When did this hesitation take place, before the statement made by Mr. Gormley or afterwards?

A. After the statement was made; that is as near as I can remember.

Q. But finally the ordinance was passed?

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. How do you know there was any ordinance passed, as you have said?

A. What do you mean?

Q. I mean just what I say. How do you know that there was any ordinance passed, as you have said?

A. Because I was there.

Q. What was the ordinance for?

A. Well, it was just for what I said—vacating the streets.

Q. What streets?

A. What streets? I didn't bother my head enough to remember what names, and I didn't make a list of them.

Q. Can you remember of one of them?

A. I guess so.

Q. Give it?

A. Adams.

Q. Adams what?

A. Adams street.

Q. Where is it?

A. In Glencoe.

286 Q. Whereabouts in Glencoe is Adams street?

A. It is in Gormley's Addition, of course.

Q. Do you know whether it is in Gormley's Addition or not?

A. I think it is there; I don't know the name.

Q. Which way does it run?

A. I don't know.

Q. North, south, east, or west?

A. I don't know.

Q. Did you see any paper handed to the council or to the clerk for any vacation of streets?

A. I saw the paper when it was read; yes, sir.

Q. Who read it?

A. I think Mr. Law.

Q. Francis P. Law?

A. Yes, sir.

Q. A member of the council?

A. Yes, sir.

Q. What was the paper which he read; do you remember?
A. I remember they called it an ordinance.
Q. This ordnance that was passed, wasn't it?
A. Yes, sir.
Q. Did James F. Dennis have anything to say about the passage of that ordinance that evening?
A. Well, I don't remember; I don't think that Dennis had much to say.
Q. The time that you was present was when the ordinance was passed for vacating Adams avenue, was it?
A. Adams and a good many others; I don't remember the names.
Q. Did Fletcher have anything to say?
A. Well, Fletcher spoke there.
Q. What did he say?
A. Well, he spoke as if it was a benefit to the village; I think he mentioned the poor sidewalks there, but I am not sure.
Q. What did Hovey say?
A. What did Hovey say?
Q. Yes, sir?
A. Hovey asked Mr. Gormley whether Mr. Culver owned any property in there, and then he asked him whether anybody else owned property there or had anything to say about it.
287 Q. About what?
A. About the property in that addition.
Q. Well, what did he say?
A. That is what Gormerly said. I told you twice, I told Mr. Pope once, and I am asked by you a second time. Now ask me again, will you?
Q. I will if I see fit. I want to know just what Hovey said, if anything?
A. I can't tell you any different. Hovey asked Mr. Gormley whether Mr. Culver owned any property in there, and then asked whether anybody else owned any property or had anything to say in there.
Q. Is that all that Hovey said?
A. All that I remember; he might have said more, but these words I remember.
Q. Is your memory on this subject pretty good?
A. Yes, sir; it is.
Q. Why do you remember this and not what others said at the council meeting that night?
A. Why do I remember this? Well, those two questions were put to Mr. Gormley and he answered them and said that he owned the property, and a few days afterwards there was a fuss made about it and things were looked over, and I remember on that account mostly.
Q. What property did Gormley say he owned, if he said anything about it?
A. O, of course, it is the addition—Gormley's Addition, I should think.
Q. Did he say that he owned Gormley's Addition?

A. Well, he say- that he owned the property that these streets ran through.

Q. Did Hovey ask him any question like this: Whether he (Gormley) owned the property through which these streets ran? Do you recollect that?

288 A. Did he own the property that the streets ran through?

Q. Yes. Did Hovey ask him any such question as that?

A. I don't know that he just mentioned that property where the streets ran through, but anyway he asked him whether he owned the property or whether anybody else had anything to say.

Q. Do you remember whether Hovey asked Gormley whether he owned the streets or not?

A. I don't think he did. I guess Hovey knows that——

Q. Mr. Schramm, I want you to answer the question, not what you thought or guessed, but just what you can remember.

A. Well, what I was going to say is that Hovey knows that the village owned the streets.

Mr. CULVER: I move to strike the last part of that answer out. I didn't ask what he thought, but what he knew—just the conversation that occurred.

Mr. POPE: The answer is explanatory and I think should go in.

The MASTER: The answer may stand for what it is worth.

Mr. CULVER: Have you talked this matter over with anybody before coming to this explanation?

A. Well, I have spoken to a good many people about this thing; yes, sir.

Q. Have you talked with Dr. Nutt about it?

A. Yes, sir.

Q. How many times have you talked it over with him?

A. Well, I don't know how many times.

Q. Several times, have you not?

A. Dr. Nutt speaks a good deal to me about business going on in Glencoe.

Q. Did he tell you what to swear to?

A. I know what to swear to without anybody telling me.

A. He is a member of the council, isn't he?

A. Dr. Nutt is a member of the council, of course.

289 Q. Have you talked this matter over with Hovey since the commencement of this suit?

A. No, sir; nor any other time; I never did.

Q. Do you remember any other ordinance that was passed that night, January 3d, 1882?

A. No, sir.

Q. Do you remember any other business that occurred that evening in the council?

A. No, sir.

Q. Do you remember about Hovey talking about anything else except this ordinance?

A. Well, of course there were other things talked about, but I don't remember what they are.

Q. This is the only thing that you remember.
A. Yes, sir; the only thing that I remember.
Q. You don't own any property, do you, in Gormley's Addition or any of your folks?
A. No, sir.
Q. You have no special interest in it?
A. No, sir.
Q. Have you been told what Hovey swore to in this case?
A. No, sir; I never heard what anybody swore to.
Q. In this case?
A. Yes, sir; in this case. Do you think I would come here and swear the way other people did, whether it was right or wrong?

Redirect examination by Mr. POPE:

Q. Mr. Schramm, do you remember of having any conversation in regard to the passage of this ordinance vacating certain streets in Gormley's Addition shortly after the meeting of the council?
A. Yes, sir.
Q. With whom did you have such conversation?
A. Dr. Nutt.
Q. And where?
A. At his home.
Q. Now, did anything that was said by Dr. Nutt at that time cause you to distinctly remember the fact, or rather cause you
290 to distinctly remember what was said at the time of the passage of the ordinance?
A. Yes, sir.
Q. Now, why do you more distinctly remember the facts and the conversation in regard to the passage of this ordinance rather than other things that took place that evening?
A. Well, that evening when I was in the meeting when Mr. Gormley said that he owned the land I thought that people were saying right along that Gormley had lost all his land, and here he was getting it all. Now, I thought it was pretty good for Gormley, and so when Dr. Nutt and I had spoken together I told him that evening Gormley owned all that land, and he said no, that he didn't own it; he knew people that owned lots in there. That is why I remember the words that were said that night by Mr. Hovey and Gormley.
Q. You spoke of a good deal of talk taking place immediately after the passage of this ordinance that has been mentioned vacating certain streets in Gormley's Addition to Glencoe. Did those conversations and the talks that took place immediately after the passage of the ordinance have any connection or influence in causing you to remember more particularly the events of the evening when the ordinance was passed?
A. That talk and the special meeting that was called caused me to remember.
Q. Was there a special meeting called?
A. A special meeting to reconsider it.

Q. To reconsider this ordinance of vacation?
A. Yes, sir.
Q. In the conversation with Dr. Nutt and in subsequent talk in the village in regard to the passage of this ordinance of vacation was or was there not any indignation shown at the passage of any such ordinance?

Question objected to by counsel for defendant; question withdrawn by counsel for complainant.

FRED. SCHRAMM.

Subscribed and sworn to before me.
JOHN I. BENNETT, *Master.*

291 JOHN J. WESTERFIELD, a witness called on behalf of complainant, duly sworn, examined in chief by Mr. POPE, testifies:

Q. Where do you reside?
A. Wilmette, Cook county.
Q. What is your business?
A. Surveyor.
Q. How long have you been a surveyor?
A. Over twenty years.
Q. And where?
A. In that part of the country; part of the time as deputy county surveyor.
Q. Are you familiar with the property known as Gormley's Addition to Glencoe, Cook county, Illinois?
A. Yes, sir; I am somewhat familiar with it.
Q. Have you ever made a survey of that property?
A. Yes, sir.
Q. When?
A. On or about the 25th of November, 1884; not an entire survey of the property.
Q. Did you ever make any survey of a portion of that property or the whole of it, with reference to locating the house of Mr. Gormley?
A. Yes, sir; that is the survey I had reference to?
Q. The dwelling and out-house buildings?
A. Yes, sir.
Q. Do you know who occupied that building?
A. The dwelling-house was occupied by Mr. Gormley.
A. One of the defendant- to this case?
A. Yes, sir.
Q. Where did you find the dwelling-house located?
A. I found the dwelling-house located in the centre of Adams avenue, perhaps about 300 feet west of the east line of Gormley's subdivision.
Q. Did you make a plat showing such survey as made by you?
A. Yes, sir.
Q. Please look at the document which I show you and state what it is.

292 A. That is the plat which I made.

Q. Embodying the results of such survey?

A. Yes, sir; a correct representation of it. I will say that I didn't make a survey of the ground covered, represented by this entire plat. This plat I compiled from the county records, and it is a correct representation of the plat as found on the records.

Q. The records of Cook county, Illinois?

A. Yes, sir.

Q. Will you please state what part of the subdivision you surveyed?

A. I made a survey of blocks 8 and 9, and Adams avenue, lying between them, in order to locate Mr. Gormley's dwelling and out-buildings, and this plat is a correct representation of that part.

Q. Is the plat a correct representation of the situation of the out-buildings—the barn and other out-buildings?

A. Yes, sir.

Mr. POPE: We offer this plat in evidence.

Objected to by counsel for defendant Gormley, as it is not a correct representation of the heading on the recorded plat.

Mr. CULVER: How do you know that Adams avenue is situated where you have located that house?

A. I found the avenue turnpike east of the house, on Culver's Addition, and I measured from the centre of the section, as shown here, south along these lots and streets to find Adams avenue *street*.

Q. Did you find any distances marked on the plat of Gormley's Addition to Glencoe?

A. Yes, sir.

Q. What distance?

A. 172 and one-half feet.

Q. Does it say feet?

A. Well, I don't think it does; it says 172 and five-tenths, and I called it 172 and five-tenths feet.

Q. That is all it says—172 and five-tenths?

A. Yes, sir.

293 Q. Did you find 20 in here?

A. I think I found 20.

Q. That is all—20?

A. Yes, sir.

Q. And 172 and five-tenths again?

A. Yes, sir.

Q. And then 80?

A. Yes, sir.

Q. Now, you assume that these figures indicate feet?

A. Yes, sir.

Q. Did you find anything in the certificate made by Wolcott that the figures indicated feet?

A. No, sir; you seldom do on a plat.

Q. Just answer my question. Did you find any indication on the map that the figures indicated feet?

A. I don't think I remember to have found any; there might have been some.

Mr. CULVER: Then I object to the introduction of this as a copy of the plat for this reason: The original plat itself was introduced before Mr. Bishop, and it is Mr. Bishop's business to furnish the copy, and not an outsider.

Mr. POPE: Mr. Bishop did furnish a copy, and it is in evidence. This embodies simply the results of the survey.

Mr. CULVER: Did you find any corner-stone for section 7?

A. The ground was frozen that morning and I did not find it then, but I am familiar with the ground, and I took the fences and lots and what I knew of the location of the street and measured south and found that Washington-avenue turnpike and the stake in the centre of it.

Q. Did you find any Adams-avenue turnpike in Gormley's Addition to Glencoe?

A. Not except the west part of it.

Q. Are you sure of that as you are of anything else you have sworn to?

294 A. No, sir; I saw the turnpike beyond. I had no business with that, but I saw beyond the turnpike; it was down the hill. I plainly saw the centre of the street east, and know from my acquaintance with the village of Glencoe that the streets are identical.

Q. How do you know it?

A. As a matter of record. The plats show the whole subdivision.

Q. Is there any grading where you found this house?

A. No, sir; none in the immediate neighborhood. I am not aware that there is any grading in any part of Gormley's Addition, except the west end of Adams street seems to have been graded a ways.

Q. Are the plats of Gormley's Addition to Glencoe and Culver and Johnson's Addition to Glencoe identical?

A. No.

Q. Does the fact that there are streets graded in Culver and Johnson's Addition make streets in Gormley's Addition to Glencoe?

A. No, sir.

Q. Then you didn't find any streets in Gormley's Addition to Glencoe graded east of the addition, did you?

A. No, sir. East of the addition?

Q. Yes; east of the addition.

A. I couldn't find streets in Gormley's Addition and east of the addition very well, but I found streets east of the addition in another addition joining it, and I knew them to be identical and continuous through both.

Q. How did you know?

A. I am acquainted with both plats.

Q. Well, there is not a figure on this plat, is there, which shows feet or rods?

A. Yes, sir.
Q. Well, what is there that shows a foot or rod on this plat?
A. This is made in the usual manner of making plats. I some time make the marginal note of it, but I haven't there.
Q. Did you find any on the original plat?
295 A. I don't remember; I don't think I did; and if I had I shouldn't have paid any attention to it.
Q. Then the plat is defective, isn't it?

Question objected to by counsel for complainant as being a question of law and one which the witness cannot answer.

Mr. CULVER: I have further objection that the plat is too indefinite; it does not show any distances at all; it does not purport to show distances.

Mr. POPE: Mr. Westerfield, does your general knowledge of the plat of Gormley's Addition to Glencoe and plats of the surrounding land enable you to state positively that you have correctly located the dwelling of Michael Gormley and the surrounding out-buildings with respect to streets, alleys, and blocks of Gormley's Addition to Glencoe?

Objected to by counsel for defendant Gormley as incompetent and irrelevant.

The MASTER: So far as the evidence would tend to establish the locality of the streets, it would not be regarded as competent, but the witness may answer the question with that proviso.

Exception by counsel for defendant Gormley.

A. Yes, sir.
Q. Will you state the grounds and reason for such answer?

Question objected to by counsel for defendant Gormley on the ground that the witness is not a judge of this court, and his opinion in the matter is not worth a cent.

Objection overruled. Exception by counsel for defendant Gormly.

A. Well, I examined the county records and got a copy of the plat of Gormley's Addition, as recorded, and on that basis made a survey, measuring south the proper distance from the centre of
296 section 7 for Adams street, as recorded in said plat; I then ran the line west through the centre of Adams and found the house, carriage-house, and shop about in the centre of the street.
Q. How did you find the centre of the section?
A. The centre of the section is indicated by a stone buried in the earth. I couldn't unbury that stone; the ground was frozen, and I took the south side of the street, as I am pretty well acquainted with the first 33 feet south of the centre.
Q. Have you made measurements before of that centre?
A. I have north of it, but not south.
Q. Do you know the location of that stone?
A. I do.

Q. Are you or are you not positive that in making this survey you located the stone in the place in which it is?

A. I couldn't have been more than one or two feet out of the way; South avenue running east and west is a traveled road.

Q. Had you before ascertained where that store was, so far as the road east and west was concerned?

A. I had.

Q. How far did you survey the streets, alleys, and lots of Gormley's Addition?

A. Only far enough to get the location of the house and out-buildings.

Q. How far was that?

A. I measured down to the centre of Adams avenue.

Q. From where?

A. From the centre of the section, and then west to a point beyond the out-buildings, keeping in the centre of the street as near as I could.

Q. You will please explain the figures in red ink upon the plat which has been produced.

297 A. The figure 7, at the northeast corner of the plat, indicates the centre of the section.

Q. What do the figures 305 indicate?

A. The distance of the house west of the centre of Grove street.

Q. What do the figures immediately northwest of the figures 305 indicate, namely, the figures 20 by 48?

A. That is the size of the house—I think the size of the house with the addition to it.

Q. What do the figures 23 by 40, shown on this plat immediately west of the figures 20 by 48, mean?

A. The size of the ell-shaped carriage house or implement shop—I don't know which to call it; it is the workshop. The figures 19 by 20 indicate the size of the shop.

Q. What does the figure 7, close up to the well, mean?

A. The figure 7 in this case doesn't mean anything. I was going to make marginal notes to show what the well was, but afterwards wrote it out.

Q. What do the figures 26 by 30 immediately underneath the word "barn," mean?

A. The size of the barn.

Q. What do the figures 30 x 40, immediately under the word "barn," mean?

A. That is the size of the barn.

Q. What do the figures 8 by 14, next to the corncrib, mean?

A. The size of the corn-crib.

Q. What do the figures 40, immediately between the shop and the carriage-house, mean?

A. The distance between the two buildings.

Q. That is, between the carriage-house and the shop?

A. Yes, sir.

Q. Are you familiar with the making of plats?

A. Well, I have made a good many.

Q. Plats of subdivisions of Cook county?

A. Yes, sir.

Q. How many years have you been engaged in the busi-
298 ness of surveying and making plats, &c.?

A. Twenty years.

Q. What is the ordinary practice in regard to making the feet upon plats? Is the word feet ordinarily used or not?

Question objected to by counsel for defendant Gormley as immaterial and incompetent. Objection overruled. Exception by counsel for defendant Gormley.

A. It is not customary to use the word feet; not once in a hundred times. I found upon examining the record——

Q. Record of what?

A. Maps and plats in the recorder's office. I found maps recorded there, by almost every surveyor practicing here, without the word feet, and in fact the only maps with the word feet in that I found were the maps made by myself.

Q. You spoke of the recorder's office. What recorder's office do you mean?

A. The recorder's office of Cook county, Illinois.

Q. When you examined the record in the recorder's office of Gormley's Addition to Glencoe did you find thereon any figures upon the streets and upon the lots?

A. There are figures indicating the width of the streets and the length and breadth of the lots.

Q. What would these figures ordinarily be understood in the profession to mean—in the profession of surveying?

Question objected to by counsel for defendant Gormley for the reason that the figures must show themselves, and the opinion of this witness cannot add to them or take from them or give a meaning to them. Objection overruled. Exception by counsel for defendant Gormley.

A. Those upon the margin of the lots made upon the streets would mean the width of the streets or size of the lots. There
299 would be another figure in the centre of the lots that would mean the number of the lots, and one in the centre of each block meaning the number of the block, not the number of the lots in feet, but the size in feet—that is, the figures upon the margin would mean the size in feet.

Q. What would the figures in the streets mean?

Objected to by counsel for defendant Gormley for the reason that the figures must show for themselves, and the opinion of this witness cannot add to them or take from them or give a meaning to them. Objection overruled. Exception by counsel for defendant Gormley.

A. The width of the street.

Q. Have you surveyed land in the vicinity of Gormley's Addition to Glencoe before?

A. Yes, sir.
Q. How often?
A. I couldn't say, but I made a survey of a number of subdivisions of Glencoe.
Q. Are you familiar with the landmarks?
A. Yes, sir.
Q. And the surveyors' marks?
A. Yes, sir.
Q. Could there be any doubt about your finding the location of the stone with which you started?
A. I don't think there could. I didn't find the stone. As I stated before, it was frozen under ground, but I knew where to look for it.
Q. And you started from the place where you knew it to be?
A. Yes, sir.
Q. Will you make this plat, which has been explained and which you have spoken about, a part of your testimony, as an exhibit to it, and mark it "Westerfield Exhibit A?"

300 Objected to by counsel for defendant Gormley.

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. Did you make the original plat of Gormley's Addition to Glencoe?
A. No, sir; that was made by Alexander Wolcott, county surveyor.
Q. You were not with him when he made it either, were you?
A. No, sir.
Q. How do you know that you ran south to Adams avenue, in Gormley's Addition to Glencoe?
A. I measured the required distance as shown on the copy I had from the records.
Q. Does the copy from the records show anything except figures?
A. No, sir.
Q. No word feet used?
A. I find on examination of the record in recorder's office that no word feet is used in any of the plat of Gormley's Addition to Glencoe; it does not appear in the whole plat.
Q. Then, when you say you ran south from the middle of section 7 to the centre of Adams avenue, in Gormley's Addition to Glencoe, you assumed that the figures meant feet?
A. I did.
Q. Was that ground which you assumed to be Adams avenue, in Gormley's Addition to Glencoe, fenced up near there?
A. No.
Q. There was a fence around the east side of it?
A. Yes, sir; on the west side of Grove street, all along.
Q. This piece of land that you call Adams avenue and where the house is situated is not graded, is it?
A. No.

Q. Plats of subdivisions of Cook county?

A. Yes, sir.

Q. How many years have you been engaged in the busi-
298 ness of surveying and making plats, &c.?

A. Twenty years.

Q. What is the ordinary practice in regard to making the feet upon plats? Is the word feet ordinarily used or not?

Question objected to by counsel for defendant Gormley as immaterial and incompetent. Objection overruled. Exception by counsel for defendant Gormley.

A. It is not customary to use the word feet; not once in a hundred times. I found upon examining the record——

Q. Record of what?

A. Maps and plats in the recorder's office. I found maps recorded there, by almost every surveyor practicing here, without the word feet, and in fact the only maps with the word feet in that I found were the maps made by myself.

Q. You spoke of the recorder's office. What recorder's office do you mean?

A. The recorder's office of Cook county, Illinois.

Q. When you examined the record in the recorder's office of Gormley's Addition to Glencoe did you find thereon any figures upon the streets and upon the lots?

A. There are figures indicating the width of the streets and the length and breadth of the lots.

Q. What would these figures ordinarily be understood in the profession to mean—in the profession of surveying?

Question objected to by counsel for defendant Gormley for the reason that the figures must show themselves, and the opinion of this witness cannot add to them or take from them or give a meaning to them. Objection overruled. Exception by counsel for defendant Gormley.

A. Those upon the margin of the lots made upon the streets would mean the width of the streets or size of the lots. There
299 would be another figure in the centre of the lots that would mean the number of the lots, and one in the centre of each block meaning the number of the block, not the number of the lots in feet, but the size in feet—that is, the figures upon the margin would mean the size in feet.

Q. What would the figures in the streets mean?

Objected to by counsel for defendant Gormley for the reason that the figures must show for themselves, and the opinion of this witness cannot add to them or take from them or give a meaning to them. Objection overruled. Exception by counsel for defendant Gormley.

A. The width of the street.

Q. Have you surveyed land in the vicinity of Gormley's Addition to Glencoe before?

A. Yes, sir.
Q. How often?
A. I couldn't say, but I made a survey of a number of subdivisions of Glencoe.
Q. Are you familiar with the landmarks?
A. Yes, sir.
Q. And the surveyors' marks?
A. Yes, sir.
Q. Could there be any doubt about your finding the location of the stone with which you started?
A. I don't think there could. I didn't find the stone. As I stated before, it was frozen under ground, but I knew where to look for it.
Q. And you started from the place where you knew it to be?
A. Yes, sir.
Q. Will you make this plat, which has been explained and which you have spoken about, a part of your testimony, as an exhibit to it, and mark it "Westerfield Exhibit A?"

300 Objected to by counsel for defendant Gormley.

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. Did you make the original plat of Gormley's Addition to Glencoe?
A. No, sir; that was made by Alexander Wolcott, county surveyor.
Q. You were not with him when he made it either, were you?
A. No, sir.
Q. How do you know that you ran south to Adams avenue, in Gormley's Addition to Glencoe?
A. I measured the required distance as shown on the copy I had from the records.
Q. Does the copy from the records show anything except figures?
A. No, sir.
Q. No word feet used?
A. I find on examination of the record in recorder's office that no word feet is used in any of the plat of Gormley's Addition to Glencoe; it does not appear in the whole plat.
Q. Then, when you say you ran south from the middle of section 7 to the centre of Adams avenue, in Gormley's Addition to Glencoe, you assumed that the figures meant feet?
A. I did.
Q. Was that ground which you assumed to be Adams avenue, in Gormley's Addition to Glencoe, fenced up near there?
A. No.
Q. There was a fence around the east side of it?
A. Yes, sir; on the west side of Grove street, all along.
Q. This piece of land that you call Adams avenue and where the house is situated is not graded, is it?
A. No.

Q. Plats of subdivisions of Cook county?

A. Yes, sir.

Q. How many years have you been engaged in the busi-
298 ness of surveying and making plats, &c.?

A. Twenty years.

Q. What is the ordinary practice in regard to making the feet upon plats? Is the word feet ordinarily used or not?

Question objected to by counsel for defendant Gormley as immaterial and incompetent. Objection overruled. Exception by counsel for defendant Gormley.

A. It is not customary to use the word feet; not once in a hundred times. I found upon examining the record——

Q. Record of what?

A. Maps and plats in the recorder's office. I found maps recorded there, by almost every surveyor practicing here, without the word feet, and in fact the only maps with the word feet in that I found were the maps made by myself.

Q. You spoke of the recorder's office. What recorder's office do you mean?

A. The recorder's office of Cook county, Illinois.

Q. When you examined the record in the recorder's office of Gormley's Addition to Glencoe did you find thereon any figures upon the streets and upon the lots?

A. There are figures indicating the width of the streets and the length and breadth of the lots.

Q. What would these figures ordinarily be understood in the profession to mean—in the profession of surveying?

Question objected to by counsel for defendant Gormley for the reason that the figures must show themselves, and the opinion of this witness cannot add to them or take from them or give a meaning to them. Objection overruled. Exception by counsel for defendant Gormley.

A. Those upon the margin of the lots made upon the streets would mean the width of the streets or size of the lots. There
299 would be another figure in the centre of the lots that would mean the number of the lots, and one in the centre of each block meaning the number of the block, not the number of the lots in feet, but the size in feet—that is, the figures upon the margin would mean the size in feet.

Q. What would the figures in the streets mean?

Objected to by counsel for defendant Gormley for the reason that the figures must show for themselves, and the opinion of this witness cannot add to them or take from them or give a meaning to them. Objection overruled. Exception by counsel for defendant Gormley.

A. The width of the street.

Q. Have you surveyed land in the vicinity of Gormley's Addition to Glencoe before?

A. Yes, sir.
Q. How often?
A. I couldn't say, but I made a survey of a number of subdivisions of Glencoe.
Q. Are you familiar with the landmarks?
A. Yes, sir.
Q. And the surveyors' marks?
A. Yes, sir.
Q. Could there be any doubt about your finding the location of the stone with which you started?
A. I don't think there could. I didn't find the stone. As I stated before, it was frozen under ground, but I knew where to look for it.
Q. And you started from the place where you knew it to be?
A. Yes, sir.
Q. Will you make this plat, which has been explained and which you have spoken about, a part of your testimony, as an exhibit to it, and mark it "Westerfield Exhibit A?"

300 Objected to by counsel for defendant Gormley.

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. Did you make the original plat of Gormley's Addition to Glencoe?
A. No, sir; that was made by Alexander Wolcott, county surveyor.
Q. You were not with him when he made it either, were you?
A. No, sir.
Q. How do you know that you ran south to Adams avenue, in Gormley's Addition to Glencoe?
A. I measured the required distance as shown on the copy I had from the records.
Q. Does the copy from the records show anything except figures?
A. No, sir.
Q. No word feet used?
A. I find on examination of the record in recorder's office that no word feet is used in any of the plat of Gormley's Addition to Glencoe; it does not appear in the whole plat.
Q. Then, when you say you ran south from the middle of section 7 to the centre of Adams avenue, in Gormley's Addition to Glencoe, you assumed that the figures meant feet?
A. I did.
Q. Was that ground which you assumed to be Adams avenue, in Gormley's Addition to Glencoe, fenced up near there?
A. No.
Q. There was a fence around the east side of it?
A. Yes, sir; on the west side of Grove street, all along.
Q. This piece of land that you call Adams avenue and where the house is situated is not graded, is it?
A. No.

Q. Nor any fencing?
A. No.
Q. It didn't appear to have been used for a street, did it, so far as you could see?
301 A. No; there was a lane made—bars at the end of it and a laneway going in to Mr. Gormley's house and buildings, but no fence.
Q. That is, it wasn't fenced on the north and south sides?
A. No, sir.
Q. You admit that the heading to this paper which you have offered as Exhibit A is not a copy of the records?
A. The heading is not a copy of the records. I didn't notice the heading when I examined the record. I knew it was a subdivision of the southwest quarter of section 7. It should be Gormley's Addition to Glencoe.

Redirect examination by Mr. POPE:

Q. How far from the north line of Adams street is the residence and also the carriage house of Mr. Gormley indicated on your plat?

Objected to by counsel for defendant Gormley for the reason that the witness does not know where Adams avenue is. Objection overruled. Exception by counsel for defendant Gormley.

A. I should think about 25 feet.
Q. Is it or is it not 25 feet?
A. The house is about 20 feet, but the carriage house extends further south, and is wide and comes nearly to the south side of the street. The house is about 20 feet and the carriage house 25 feet.
Q. How far would the residence and the carriage house be from the south side of Adams street?

Objected to by counsel for defendant Gormley for same reason as above. Objection overruled. Exception by counsel for defendant Gormley.

A. Well, the house doesn't stand square with the world or square with the street. The southwest corner of it would be about 30 feet from the south side of the street and the carriage house would
302 be about 20 feet from the south side. It is in the form of an ell.

JOHN G. WESTERFIELD.

Subscribed and sworn to before me—

JOHN I. BENNETT,
Master, &c.

(Here follows diagram marked page 302*a*.)

303 CHARLES E. BROWNE, a witness called on behalf of the complainant, being first duly sworn, examined in chief by Mr. POPE, testifies:

Q. Please give your full name.
A. Charles E. Browne.

Q. Where do you reside?
A. Glencoe.
Q. Cook county, Illinois?
A. Yes, sir.
Q. What is your business?
A. Real estate.
Q. How long have you been engaged in the real estate business?
A. About 20 years.
Q. Where have you dealt in such property?
A. Principally in Evanston and Glencoe.
Q. Are you officially connected with the government of the village of Glencoe?
A. I am.
Q. In what way?
A. I am president of the council.
Q. Of the present council?
A. Yes, sir.
Q. Will you please state what, in your opinion, is the value of blocks 3, 4, 5; lots numbers 3, 4, 5, 6, 7, 11, 12, in block 6; blocks 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, in Gormley's Addition to Glencoe, Cook county, Illinois?
A. I am not very well acquainted with that part of the village. How much by the acre?
Q. Yes.
A. Well, I should consider it worth, by the acre, from $75 to $100; $75 at the lowest.
Q. About how many acres are there, if you know?
A. I don't know.
Q. What was the valuation, the value per acre, of this property on March 31, 1884?
A. I should say about the same. I wouldn't see any difference particularly.

Cross-examination by Mr. CULVER:

304 Q. When you stated that this property was worth from $75 to $100 per acre you meant that it was worth that in 1884, did you?
A. Yes, sir.

CHARLES E. BROWNE.

Subscribed and sworn to before me—

JOHN I. BENNETT,
Master, &c.

MICHAEL GORMLEY, one of the defendants in this case, recalled, examined on behalf of the complainant, testified as follows:

Q. Mr. Gormley, how many acres are there in each of the blocks? About how many in the plat mentioned of the property in controversy?
A. I don't know.
Q. Can you not state how many?

A. No, sir; I cannot.
Q. Why not?
A. I never measured them.
Q. Can't you state approximately?
A. Well, except I might guess at it. I have no other means of telling. I never figured up one of them in my life.
Q. How many acres were included in what was known as Gormley's Addition to Glencoe, or about how many?
A. Well, I couldn't say that it wasn't a full quarter-section. There wasn't a full 160 acres in it, but I don't know how much it lacked, nor in that other piece.
Q. Culver and Johnson's?
A. Yes, sir. In section 18 there wasn't a full 20. I don't know exactly how much it lacked. It was a fractional, too. I couldn't tell you, sir, because I don't know. I never had it computed and don't know.
Q. In the property in controversy is there as many as ten acres?
305 A. In where?
Q. In the property in controversy, as many as ten acres?
A. In the whole of them?
Q. Yes, sir.
A. Yes, sir; there ought to be more.
Q. Mr. Gormley, how much of the lots and blocks in Gormley's Addition to Glencoe did you own at the time of the alleged passage of the ordinance of January 3, 1882?
A. I don't know.
Q. Not including the property in controversy, how many of the lots and blocks in Gormley's Addition to Glencoe did you own at the time of the alleged passage of the ordinance of January 3d, 1882?

Objected to by counsel for defendant Gormley on the ground that it is immaterial. Objection overruled. Exception by counsel for defendant Gormley.

A. Well, sir, I must state right here that I cannot tell that, because I think that in these foreclosure proceedings that there was illegal steps taken which deprived me of my right to that place.
Q. Did you not state to Judge Gary, in the trial of the mandamus case in the superior court of Cook county, Illinois, commenced by you against John L. Day, that you only owned the streets or claimed to own the streets sought to be vacated?
A. I don't know as I did.
Q. Will you swear that you did not?
A. I won't admit that I——
Q. Now, is it a fact, Mr. Gormley, that at the date of the ordinance of January 3d, 1882, you had either mortgaged or conveyed—not referring to the property in controversy—that you had mortgaged or conveyed all of the balance of Gormley's Addition to Glencoe?
A. Yes; I believe it is a fact.

Q. Isn't it a fact that all of the property that you had mort-
306 gaged in Gormley's Addition to Glencoe at the time of the alleged passage of the ordinance of January 3d, 1882, had been foreclosed by proceedings either in court or by power of sale?

A. I don't know.

Q. Had there not been alleged foreclosures and had not the trustees or mortgagees conveyed such property under such foreclosure or power of sale?

Objected to by counsel for defendant Gormley on the ground that the records are the best evidence.

A. I don't know that of my own knowledge; I never was at any foreclosure, and never had any notice of foreclosure.

Q. What property, Mr. Gormley, in Gormley's Addition to Glencoe did you claim to be the owner of at the time of the alleged passage of the ordinance of January 3d, 1882?

Question objected to by counsel for defendant Gormley because the question is not definite as to whom he made any claim.

A. I don't know.

Q. Can you mention any property in Gormley's Addition to Glencoe that you had not mortgaged or sold and conveyed at the date of the alleged passage of the ordinance of January 3d, 1882?

A. I don't know that I can.

Q. Can you mention any property which you had not mortgaged or sold at the time of the alleged passage—that is, lots and blocks in Gormley's Addition to Glencoe—that you had not mortgaged or sold at the date of the alleged passage of the ordinance of October 4, 1881, purporting to vacate Adams avenue between Grove street and Bluff street, in Gormley's Addition to Glencoe?

A. No, sir; I cannot.

Q. Can you mention any of the lots or blocks in Gormley's Addi-
tion to Glencoe which you had mortgaged and which had
307 not been foreclosed, either by proceedings in court or by sales under powers of sale in trust deeds, at the dates of the alleged passage of the ordinance purporting to vacate Adams avenue between Grove street and Bluff street, to Gormley's Addition to Glencoe, and the ordinance of January 3d, 1882, purporting to vacate certain streets in Gormley's Addition to Glencoe?

A. No; I cannot.

Q. Did you or did you not, on the 6th day of March, 1874, appear before J. Charles Haines, a justice of the peace in Cook county, Illinois, and acknowledge the plat of Gormley's Addition to Glencoe which has been offered in evidence in this case?

A. I appeared there some time, but when you put that question to me before I had a plat here and the map, and I presume it is rightly answered, but I am not positive about the date now.

Q. You did appear, did you not, at the date which the plat states you appeared?

A. Yes, sir.

Q. Before Mr. Haines and acknowledged the plat?

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. Were those blocks ever staked off?

Objected to by counsel for complainant as incompetent cross-examination. Objection overruled. Exception by counsel for complainant.

A. No, sir; they never were staked off.
Q. Were any lots ever staked off?

Objected to by counsel for complainant for same reason as above. Overruled; exception.

A. No, sir; not one.
Q. Any corners ever set to that subdivision?

Objected to — same reason; exception.

308 A. No, sir; never, nor any line ever run there of any kind.
Q. Any streets built on this ground?

Objected to as being incompetent and for the reason the sole purpose of this witness being examined was simply to establish that the property in controversy exceeded the value of $500. Objection sustained. Exception by counsel for defendant Gormley.

Mr. POPE: I offer in evidence a certified copy of the patent of the United States of America, dated the 10th day of March, 1843, to Marcus Gormley, of Cook county, Illinois, of the southwest quarter of section 7, in fractional township 42 north, of range 13 east, in the district of lands subject to sale at Chicago, Illinois, containing 156 acres and thirty-nine hundredths of an acre, and mark it "Exhibit 1."

Objected to by counsel for defendant Gormley.

Mr. POPE: I offer in evidence an act to incorporate the village of Glencoe, in force March 29, 1869, contained in the Private Laws of the State of Illinois of 1869, volume 3, pages 744 to 768, and mark it "Exhibit 2."

I offer in evidence a certified copy of what purports to be a vacation ordinance of Adams avenue between Grove street and Bluff street, in Gormley's Addition to Glencoe, and mark it "Exhibit 3."

I also offer in evidence a document which purports to contain a record of proceedings of January 3, 1882, a certified copy of the record of proceedings of the village of Glencoe, marked "Exhibit 4."

I also offer in evidence what purports to be a certified copy of the vacation ordinance vacating any and all ordinances heretofore passed by the council vacating any street or parts of streets in Gorm-
309 ley's Addition to Glencoe or purporting so to do, marked "Exhibit 5," all being certified to by James W. Brockway, recorder of Cook county, Illinois, Brockway's signature and certificate being certified to by John G. Rogers, chief justice of the circuit court of Cook county, and Judge Rogers' signature being certified to by Henry Best, clerk.

Mr. CULVER: I object to the admission on the ground that they are not properly certified to, and are incompetent and irrelevant.

No other witness appearing, further taking of testimony adjourned.

"EXHIBIT I."

31370. B. (4–205.) H. K. W. Ja. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 17, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Marcus Gormley, founded on Chicago, Illinois, cash entry No. 8359, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
(413–5.0000.) *Commissioner of General Land Office.*

(4–430.)

Certificate No. 8359.

The United States of America to all to whom these presents shall come, Greeting:

310 Whereas Marcus Gormley, of Cook county, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Chicago, whereby it appears that full payment has been made by the said Marcus Gormley, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southwest quarter of section seven, in fractional township forty-two north of range thirteen east, in the district of lands subject to sale at Chicago, Illinois, containing one hundred and fifty-six acres and thirty-nine hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Marcus Gormley:

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Marcus Gormley and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Marcus Gormley and to his heirs and assigns forever.

In testimony whereof I, John Tyler, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the tenth day of March, in the year of our Lord one thousand eight hundred and forty-three, and of the Independence of the United States the sixty-seventh.

[L. S.]

By the President:

JOHN TYLER.
By R. TYLER, *Secretary.*

311 J. WILLIAMSON,
Recorder of the General Land Office.

Recorded vol. 17, page 202.
(12923–2.000.)

312 FRIDAY, *Feb'y* 13, 1885—1.30 p. m.

Met pursuant to notice.

Present: Chas. E. Pope, counsel for complainant; Morton Culver, counsel for defendants, and James F. Dennis, a witness produced by and upon the part of the complainant.

JAMES F. DENNIS, a witness recalled on behalf of complainant, examined in chief by Mr. POPE, deposes and says as follows:

Q. Mr. Dennis, will you please look at the paper marked Day Exhibit F, being a ballot headed "Village of Glencoe, people's ticket," and state whether you have ever seen ballots of that description?

Question objected to by counsel for defendant Gormley as immaterial.

A. I think so.
Q. Where and when?
A. At the village election in Glencoe.
Q. At what election?
A. At the spring election.
Q. What year?
A. Two years ago—1884.
Q. Will you look at the list of persons who are mentioned here under the heading "For councilmen" and state whether you know the gentlemen mentioned there?
A. I know all of them; yes, sir.
Q. Where did you see that ticket?
A. At the polls.
Q. By whom was it used?
A. I don't know. I didn't see that ticket itself, but I saw duplicate tickets the same as that. The tickets were peddled there.
Q. How many tickets were there at that time?
A. Two different tickets.
Q. That is, two different parties, you mean?
A. Yes, sir.
Q. Is that what is called the opposition ticket?
A. Yes, sir.

313 Q. That is the opposition ticket to the council that were elected at that election?
A. Yes, sir.

Q. Will you state whether the gentlemen mentioned upon that ticket are either related to or are friends of Mr. Gormley, the defendant in this case?

Question objected to as immaterial and incompetent.

The MASTER: The objections may be all taken down and will be considered afterwards.

A. Henry Taylor is a brother-in-law of Mr. Gormley's.

Q. The defendant in this case?

A. Yes, sir.

Q. Do you know whether the other parties mentioned in the ticket are friends of his?

A. I don't know as they are particular friends of his, excepting Mr. Culver; Mr. Wells might be.

Q. Is Mr. Morton Culver there the attorney for Mr. Gormley in this case?

A. Yes, sir.

Q. Did you see the defendant, Mr. Gormley, present at the polls at the election in 1884?

A. No, sir.

Q. Was he present?

Question objected to by counsel for defendant Gormley because it does not state at what polls, and it is a fact that there were a good many polls in the State of Illinois.

Q. Was he present at that election?

The question is admitted subject to objection, the defendants having a right to urge the objection before the master hereafter.

A. He was not present at the Glencoe polls. I didn't see him, at least.

Q. Where was he?

A. I saw him at Winnetka—that is, the township—election. We vote two polls spring election, village and township.

Q. Were any of the candidates mentioned upon this ticket
314 voted for or candidates at the election held at Winnetka?

A. No, sir; not that I know of.

Q. Was that the town election?

A. The town election I am not sure, but Henry Taylor was running on the town ticket for commissioner, or something; I am not certain what it was.

Q. Mr. Dennis, why did the council of the village of Glencoe pass the ordinance or ordinances repealing any ordinance for the vacation of any street or streets in Gormley's Addition to Glencoe?

Question objected to by counsel for defendant Gormley as incompetent.

The master states that he is of the opinion that the evidence would not be competent, but as the court may take a different view of it, and the master desires not to prevent the court from hearing the whole case, the testimony may be admitted, at the same time stating that his view of it would be that it was incompetent evidence.

Exception by counsel for defendant Gormley.

A. For the reason that we discovered we had made a mistake in granting the vacation. We believed that the party should show his title and bring in deeds or abstracts signed by all the parties interested in the property, which had not been done.

Mr. CULVER: I now move to expunge the answer on the ground that it is incompetent and irrelevant.

The motion is reserved to be passed upon in the report of the master.

Q. You have spoken in your testimony of certain statements made by Mr. Gormley as to no one having any interest in the property excepting himself through which the streets passed which were vacated. Did you ever discover whether such statements
315 were true or false?

Question objected to by counsel for defendant Gormley because the record is the best evidence and this man is not an expert.
Question admitted subject to objection.
Exception by counsel for defendant Gormley.

A. As soon as we had passed the ordinance that night we knew that there had been a mortgage foreclosed on this property which Mr. Gormley asked to have the streets vacated in, and for the [that] reason we called a special meeting and reconsidered the motion. We knew that other parties were interested in that property besides himself.

Mr. CULVER: I move to strike out the answer of witness because it is incompetent and irrelevant.

Motion overruled. Exception by counsel for defendants.

Q. How soon after the passage of the ordinance did you discover this?
A. The next day.
Q. Did you discover at that time anything about the foreclosure of that mortgage?
A. No, sir.
Q. Simply the fact that there was a mortgage?
A. Yes, sir.
Q. Why did the counsel [council] pass the rescinding ordinance of the 7th day of February, 1882, which has been introduced in evidence, rescinding any and all ordinances vacating any street or parts of streets in Gormley's Addition to Glencoe, or purporting so to do?

Question objected to by counsel for defendant Gormley because the record is the best evidence of any such thing, and because it simply asks the witness his opinion, and it is not competent. Admitted subject to objection. Exception by counsel for defendant Gormley.

316 A. I should give the same answer as before.
Q. Just give the reason. Was it because of the discovery

of any fact or facts which you did not know at the time of the passage of the first ordinance?

A. Certainly.

Q. And which you did not know of at the time of the passing of the ordinance vacating any and all streets in Gormley's Addition to Glencoe?

Question objected to as incompetent, because it assumes that this witness is the counsel of the village of Glencoe and can make and unmake ordinances at his pleasure. Objection overruled. Exception by counsel for defendants.

A. Well, we passed this ordinance for the reason we discovered, as I stated before, that the ordinance was granted—the petition was granted—for the vacation of these streets under statements which we had reason to believe were not true.

Q. Statements by whom?

A. By Mr. Gormley.

Q. The defendant in this case?

A. Yes, sir.

Q. When were those statements made?

A. At the regular meeting.

Q. Before or after the passage of the ordinance vacating streets?

A. Before the passage.

Q. What effect, if any, did the statements made by the defendant Gormley that you have testified to, about nobody having any interest in the land through which the streets passed excepting himself, have upon the action of the council in passing ordinances vacating streets in Gormley's Addition to Glencoe?

Question objected to by counsel for defendants because the witness is not the council nor judge of the council. Objection overruled. Exception by counsel for defendants.

317 A. We should never have granted the petition if Mr. Gormley had not stated to us that no one else was interested in the property but himself. That is why we asked him that question. If anybody else had been interested in the property we should have waited and got their permission first before granting it.

Q. You spoke about discovering the fact that the property through which these streets passed had been mortgaged. What members of the common council discovered this?

A. After the ordinance was passed?

Q. Yes.

A. Well, we knew of it the next day.

Q. Who knew of it?

A. I knew it.

Q. Who else?

A. And Frank Law.

Q. Who else?

A. Dr. Nutt. He was not a member of the council, though.

Q. Who else of the council discovered it?

A. The clerk.

Q. When you passed the ordinance rescinding the vacation ordinance or ordinances who, at that time, of the council knew of the property having been mortgaged?

Question objected to as leading and incompetent.

A. I knew it myself.

Q. Was there any talk among the members of the council before the meeting at which you passed the ordinance rescinding the vacation ordinances about this property having been mortgaged?

Question objected to by counsel for defendants. Admitted subject to objection. Exception by counsel for defendants.

A. Yes, sir.

Q. With what members of the council did this conversation take place?

Question objected to by counsel for defendants.

The MASTER: I will not admit what the conversation was,
318 but the fact that the subject was discussed can be proven.

A. Between Frank Law and myself and the clerk, John L. Day.

Q. Did all the council who voted to rescind the vacation ordinances have knowledge of this property having been mortgaged before the vote was taken upon the ordinance rescinding the vacation ordinances?

Question objected to by counsel for defendants. Objection overruled. Exception by counsel for defendants.

A. I do not know.

Q. What you know is that you and Frank Law and the clerk knew.

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. How many ordinances were passed vacating streets in Gormley's Addition to Glencoe?

A. Two.

Q. Were you present at the time the first ordinance passed?

A. Yes, sir.

Q. Haven't you already sworn that no representations at all were made at that meeting?

A. No, sir; I have not.

Q. Have you sworn that there were any representations made by Mr. Gormley at that meeting?

A. Yes, sir.

Q. When was that first ordinance passed?

A. At the first regular meeting of council in January, 1882.

Q. That is the one you referred to, then, as the first one?

A. Yes, sir.

Q. When did the second one pass?

A. I don't know the date, but within a week, I think, of the first one.

Q. The ordinance for vacating streets in Gormley's Addition to Glencoe?

A. Yes, sir.

Q. You were elected at the spring election of 1884 to the
319 council of the village of Glencoe, were you not?

A. Yes, sir.

Q. Were you an enemy of Mr. Gormley's?

A. Not that I know of.

Q. Are you now?

A. Not that I know of.

Q. Are you friendly with him?

A. Everything excepting probably we don't agree in politics always.

Q. You are a Democrat and he is a Republican?

A. Yes, sir.

Q. Do you know whether Culver is a Republican or Democrat?

A. I believe he is a Democrat.

Q. How about Henry Taylor?

A. He was a Democrat until this last election, when I believe he turned Republican.

Q. How about George Wells; what sort of a fellow is he?

A. I cannot answer for him.

Q. Is John Beck a Democrat or Republican?

A. A Republican.

Q. You all seem to be friendly except on politics?

A. In a village election we don't take politics into consideration.

Q. Don't you know, as a fact, Mr. Dennis, that Mr. Gormley, on that election day, was running for town assessor?

A. Yes, he was. The election of 1884 you mean?

Q. Yes?

A. Yes, sir.

Q. Did you ever hear anybody say that Mr. Gormley was at the Glencoe polls on that election day?

A. No, sir.

Q. And you didn't see him there?

A. My testimony is that I did not see him at the Glencoe polls.

Q. You didn't see him peddling tickets at the polls at Glencoe?

A. No, sir.

Q. This suit was started the same day as election, wasn't it, or the day after?

A. I couldn't answer as to that.

320 Q. When was the injunction served on you?

A. The day before election, I believe; somewhere in that neighborhood—the day of the election.

Q. Don't you know as a matter of fact, Mr. Dennis, that this suit was partly gotten up at the instigation of Dr. Nutt, of whom you have spoken, for election purposes?

A. I don't know the case to be such.

Q. And that he made a mistake in getting it published by just one day?

A. I never heard of it.

Q. Did you hear anybody at the polls who was peddling the ticket that has been here offered in evidence make any statement that he wanted this ticket elected, so that the streets in Gormley's Addition to Glencoe might be vacated?

A. No, sir.

Q. Who did you see peddling this ticket that has been offered in evidence here, at the polls, if anybody?

A. The Diedricks at the north end; there were two or three—Diedrick and Schneider.

Q. Did you hear any one say they wanted this ticket elected, so that these streets in Gormley's Addition to Glencoe might be vacated?

A. No, sir.

Q. Did you hear anybody that had anything to do with the election say he wanted this ticket elected, so that these streets in Gormley's Addition to Glencoe might be vacated?

A. Not this ticket; no, sir.

Q. Did you ever hear Henry Taylor say that he wanted this ticket elected, so that these streets might be vacated?

A. No, sir.

Q. Did you ever hear Morton Culver say that?

A. No, sir.

Q. Have you heard Morton Culver say anything to the contrary?

A. No, sir.

321 Q. Did you hear Beck say so?

A. No, sir.

Q. Or Diedrick?

A. No, sir.

Q. Or any other candidate on the ticket?

A. No, sir.

Redirect examination by Mr. POPE:

Q. Was there any conversation on the day of the election about the vacating of any street or streets in Gormley's Addition to Glencoe by the people on what was called the opposition ticket—that is, not conversation by the candidate on the opposition ticket, but any conversation among the people at the polls and in the village?

Question objected to by counsel for defendants.

The MASTER: My present view is that there is considerable evidence in here that is not competent. I think it is competent to show anything that Mr. Gormley said or did in reference to this election, as well as in reference to the inducement of the board to pass the original ordinance, to show why the original ordinance was passed and why it was repealed; but it seems to me that proof as to the opposition ticket, how it might affect the election and all that, could have no bearing; nor could town talk have any bearing, only by reason of its having been alleged in the bill, and if it is improperly alleged in the bill it ultimately would be stricken out and disregarded; but I may be wrong in this, and in order that you may

have your rights, both sides, before the court I will allow the proof to be taken subject to objection on the part of defendants' counsel.

Exception by counsel for defendants.

A. Not at this election ; I didn't hear anything.

322 Q. Prior to the election ?

A. Prior to this election, I did ; yes, sir.

Q. How long prior to this election ?

A. Over a year. You have the wrong election ; both of you have the wrong election.

Q. What election do you refer to, where the conversation took place ?

A. The election of the year before, the spring of 1883, when Mr. Gormley was a candidate himself.

Q. Do you remember what street or portions of streets was vacated at the passage of the first vacation ordinance you have mentioned ?

A. What street ?

Q. Street or streets in Gormley's Addition to Glencoe.

A. I don't know the name of the street ; no, sir.

Q. What statements did Mr. Gormley make at the time of the passage of the first vacation ordinance ?

Counsel for defendants objects unless counsel for complainant fixes the time at which this ordinance was passed.

The witness states : I misunderstood the question asked by Mr. Culver in my cross-examination. The question I was answering was this : When the original ordinance was passed, that was in 1882. The first ordinance, October, 1881, I know nothing about. I thought he asked me how long between the time the ordinance was passed granting this vacation of all these streets—how long before the next meeting that we reconsidered the motion.

Q. The ordinance of January 3d, 1882 ?

A. Yes ; that is the question I was answering. I didn't understand the question. The first meeting I knew nothing about.

Q. The ordinance of October, 1881, you know nothing about ?

A. No, sir.

Q. Well, Mr. Dennis, these representations made by Mr.

323 Gormley were made at the time of the passage of the ordinance of January 3d, 1882 ; is that a fact ?

A. Yes, sir.

Q. And when you spoke of a week intervening between the passage of the two ordinances, you referred to the week or the time intervening between the passage of the ordinance of January 3d, 1882, and the special meeting of January 12, 1882 ?

A. Yes, sir.

JAMES F. DENNIS.

Subscribed and sworn to before me—

JOHN I. BENNETT,
Master, &c.

Adjourned.

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SATURDAY, *Feb'y* 28, 1885—10.30 a. m.

Parties again met in pursuance of notice, and thereupon complainant's counsel offered in evidence certified copies of precipe issued in the case of Michael Gormley against John L. Day in the supreme court of Illinois, northern grand division, asking that a writ of error issue to the clerk of the appellate court, first district of Illinois, and summons to the sheriff of Cook county commanding him to summon the defendant, John L. Day, according to law; also a certified copy of the *scire facias* issued in pursuance of such precipe, directed to John L. Day, in the suit of Michael Gormley against John L. Day, with return thereon of the sheriff, Seth F. Hanchett, of the service on John L. Day, duly certified by the clerk of the supreme court of Illinois under seal of said court, and by John Schofield, presiding chief justice of the supreme court.

The admission of which evidence is objected to by counsel for defendants on the ground of irrelevance.

Evidence admitted subject to objection.

324 Exception by counsel for def.

The complainant now offers again in evidence certified copies of the ordinance vacating Adams avenue between Grove street and Bluff street, certified copy of documents purporting to be the records of the council of the village of Glencoe, 1882, and certified copy of an ordinance vacating any and all street or parts of streets in Gormley's Addition to Glencoe, passed by the council of the village of Glencoe, passed February 7, 1882, with the additional certificates thereon of Richard Prendergast, judge of the county court, and of M. W. Ryan, clerk of the county court.

The ordinance of February 7, 1882, vacating any and all streets or parts of streets in Gormley's Addition to Glencoe, objected to by counsel for defendants, as it was not passed by the requisite number of votes.

Evidence admitted subject to objection.

Exception by counsel for defendants.

Counsel for complainant now offers in evidence the deposition of Alfred Corning Clark, taken in this case upon the notice attached, said deposition taken before Frederick N. Phinny, notary public, city and county of New York, on the 23d day of February, 1885.

MORTON CULVER, a witness called on behalf of the complainant, being first duly sworn, and examined in chief by Mr. POPE, testifies:

Q. You are the attorney of Michael Gormley, present?

A. I am.

Q. Were you the attorney of Michael Gormley in the mandamus proceedings commenced by him in the superior court of Cook county in the suit of Michael Gormley against John L. Day?

A. Yes; I was.

Q. Were you also his attorney in the appeal taken from the
325 judgment in that case of Judge Gary, the said appeal being taken to the appellate court, first district of Illinois?

A. I cannot say whether I was the sole attorney or whether it was Culver & Hurford.

Q. Were you one of the attornies?
A. Yes, sir.
Q. Has any writ of error been taken from the judgment of the appellate court in that case, such writ of error being taken to the supreme court of Illinois?
A. Yes, sir; now pending in the supreme court of Illinois.
Q. Is the precipe, a certified copy of which has been offered in evidence, a copy of the precipe filed by you, as the attorney of Michael Gormley, in the supreme court of the State of Illinois in that case?
A. I don't know whether it is or not.
Q. Is it, to the best of your knowledge and belief?
A. I think it is.
Q. You did file, did you not, a precipe in the supreme court of Illinois asking a writ of error to issue to the appellate —, first district of Illinois, in the case of Michael Gormley against John L. Day, spoken of?
A. I may have.
Q. In this case?
A. In this case.
Q. That has been spoken of in the appellate court?
A. Yes; and I believe it is the same case.

In the U. S. Circuit Court for the Northern District of Ills.

ALFRED CORNING CLARKE } Bill.
vs.
VILLAGE OF GLENCOE *et al.* }

326 Parties appear on this 4th day of August, A. D. 1885—Morton Culver, sol'r on the part of defendant, and Charles B. McCoy, sol'r on the part of complainant—and thereupon the defendants produce before the master Francis B. Law as witness.

FRANCIS B. LAW, being duly sworn, testifies as follows, to wit:

Q. What is your name, residence, and occupation?
A. Francis B. Law; Wilmette; occupation, none.
Q. State if, in the month of January, 1882, you were a member of the council of the village of Glencoe, county of Cook, State of Ills.?
A. I was.
Q. State if you were present at the council of the village of Glencoe on that day, the 3d of January, 1882?
A. I was.
Q. State if you remember of the passage of an ordinance on that day by the council of the village of Glencoe for the vacation of certain streets in Gormley's Addition to Glencoe?
A. Yes, sir.
Q. State what occurred at that meeting prior to and up to the passage of this ordinance; what conversation was had in the council meeting by any of the members of the council and by Mr. Gormley with reference to this ordinance. State all you remember concerning it.

A. As I recollect, Mr. Gormley handed me the ordinance to read and I read it, and somebody, some one of the council, moved its passage, and it was seconded and almost immediately carried. The council then made a motion for adjournment. The meeting was adjourned.

Q. Just immediately after the ordinance was read?

327 A. I don't know whether the motion to adjourn was made immediately after or not. I asked the question if anybody else was interested in this ordinance or in this matter beside Gormley, and the answer was no.

Q. Who answered you?

A. I don't know. I suppose it was either Mr. Gormley or Mr. Dennis who answered me.

Q. Who answered you, did you say?

A. I think it was Mr. Dennis said that, but I can't remember exactly which one.

Q. Was this Mr. Dennis a member of the council at that time?

A. Yes, sir.

Q. Do you remember who was the president of the council.

A. Augustus H. Hovey.

Q. Do you remember Augustus H. Hovey asking Michael Gormley whether any one else was interested in the passage of this ordinance, or whether he owned the land over which these streets proposed to be vacated ran, or whether he owned the land adjacent to the streets proposed to be vacated?

A. No; I don't think any such question was asked, as I remember.

Q. Would you be likely to remember anything of that sort?

A. Yes, sir.

Q. And are you positive that no such conversation occurred?

A. Quite positive; to the best of my belief, there was no such conversation.

Q. Did you hear Mr. Gormley make any remarks in the council at all?

A. No.

Q. Did you hear him make any remarks to any of the members of the council in the meeting prior to the passage of the ordinance?

A. No, sir; Mr. Gormley sat next to me in the council meeting that night, but I do not recollect any conversation in relation

328 to that ordinance. Mr. Gormley handed me the ordinance to read and I read it.

Q. No petition read, that you remember?

A. No, sir.

Q. Have you heard the evidence given in this testimony now before the master of Augustus H. Hovey and of Porter N. Sherwood and of Frederick Schramm?

A. I have.

Q. According to the best of your recollection, is the testimony given by them about any conversation between Augustus Hovey and Michael Gormley true?

A. Do you mean during that council meeting?

Q. Yes.

A. No; I recollect no such conversation.

Q. State whether you were present during the whole of the council meeting.

A. I think I was; I am not positive about that. I know I was there when it adjourned.

Cross-examination by Mr. McCoy:

Q. At the time of the voting for this ordinance you understood that Mr. Gormley owned property, did you not?

(Objected to as immaterial and irrelevant.)

A. Yes; I supposed he did.

Q. Were you a member of the council at that time?

A. Yes.

Q. How long were you a member of it?

A. A year.

Q. Only one year altogether?

A. About a year.

Q. How long did you reside at Glencoe?

A. Seven years.

Q. What is your age, Mr. Law?

A. 34.

Q. Are you a married man?

A. No.

Q. What business were you engaged in at Glencoe?

A. None.

Q. Have you ever been engaged in any business?

329 A. Yes, sir.

Q. What business?

A. Real estate.

Q. When did you cease to reside at Glencoe?

A. Since two years ago last spring.

Q. Do you remember when Mr. Gormley came into that meeting?

A. No.

Q. What time of day was the meeting?

A. In the evening, after supper; seven or eight o'clock—somewheres along there.

Q. You voted for the passage of this ordinance, did you not?

A. Yes.

Q. And you say that nothing was said about who owned the property prior to the time the ordinance was passed?

A. Yes. As I said in my direct testimony there, after that ordinance was read the question came up, Was anybody else interested?

Q. Who asked the question?

A. I asked the question, and I was answered no.

Q. Mr. Dennis said he answered the question.

A. Mr. Gormley sat next to me on the seat.

Q. So, then, somebody did say, in answer to your question, that no one else was interested in the matter except Mr. Gormley?

A. Yes.

Q. Mr. Gormley was present at that time?
A. He was.
Q. And made no contradiction of that statement?
A. Not that I heard.

FRANCIS B. LAW.

Subscribed and sworn to before me—

JOHN I. BENNETT,
Master, &c.

And thereupon the defendants produced before the master CHRISTOPHER LEHMAN as witness, who, being duly sworn, testifies as follows, to wit:

330 Q. What is your name?
A. Christopher Lehman.
Q. Where do you live?
A. I live near Mr. Gormley, in Glencoe.
Q. How long have you lived there?
A. I lived there since 1843.
Q. How long have you known Mr. Michael Gormley?
A. Well, I knew him since 1843.
Q. How long have you known the land southwest quarter of section 7, township 42 N., of range 13 E., of the 3rd prin. meridian, in the village of Glencoe, county of Cook, State of Illinois?
A. I have known it since 1843.
Q. Do you know whether that quarter section has been fenced or not?
A. I know it was fenced in 1857; in the spring of 1857.
Q. Who fenced it?
A. Gormley fenced it.
Q. Do you mean Michael Gormley?
A. Yes.
Q. Do you know whether this land has been kept fenced up ever since?
A. It has been fenced up ever since.
Q. Who keeps it fenced up?
A. Michael Gormley keeps it fenced up.
Q. Do you know where Michael Gormley lives?
A. Why, he lives there.
Q. How long has he lived there?
A. I cannot tell exactly.
Q. Has he lived there ever since you first came there?
331 A. Yes, sir; all the time.
Q. Do you know whether Mr. Gormley is married or not?
A. Well, I know when he was married, but not the year. He was married a long time ago; over thirty years.
Q. Has he a family?
A. Yes; he has a good many children.
Q. Do you know whether his children live there on his property with him?
A. Yes, sir.

Q. Are any of his children living with him yet?
A. Yes, sir.
Q. Does his wife live with him yet?
A. Yes.
Q. Always lived with him ever since they were married?
A. Yes.

Cross-examination:

Q. Mr. Lehman, what is your name and residence?
A. Christopher L. Lehman; Glencoe.
Q. You supposed, Mr. Lehman, that Michael Gormley owned this one-quarter section?
A. That is what I think.
Q. Do you know who paid the taxes on it for the last four or five years?
A. I do not know who paid the taxes; it is not my business to look up taxes.

Thereupon the defendants produce before the master A. W. FLETCHER as witness, who, being duly sworn, testifies as follows, to wit:

332 Q. What is your name, residence, age, and occupation?
A. A. W. Fletcher; 40; live at Highland Park, Lake Co., Ills.; lumber and coal business.
Q. State whether in the month of January, 1882, you were a member of the council of the village of Glencoe, county of Cook, State of Illinois.
A. I was.
Q. State whether you were present at the meeting of the council of the village of Glencoe held on the 3d of January, 1882, at which an ordinance was passed by the council for the vacation of certain streets in Gormley's Addition to Glencoe.
A. I was present.
Q. You may state, if you please, all that occurred at that council meeting with reference to the introduction and passage of this ordinance; state all conversation held relative thereto between Michael Gormley, any of the members, and the president of the council of the village of Glencoe.
A. Mr. Gormley gave Mr. Law an ordinance, who read it and moved its adoption.
Q. In the council immediately?
A. Yes, sir; in the council immediately; it was voted and passed.
Q. Have you heard read the testimony of Augustus H. Hovey and of Porter N. Sherwood and of Frederick Schramm that is here now before the master in this case with reference to remarks made by Augustus H. Hovey, the president of the council at that time, to Michael Gormley at that time?
A. I have.
Q. State whether from your own knowledge the statements made by Hovey or Sherwood or by Schramm with reference to any repre-

sentation made by Gormley at that meeting are true or not.

333 A. They are not true.

Q. Were you present during the whole session of this meeting?

A. I was.

Q. If anything of the sort had occurred—that is, representations made by Gormley or questions asked by Hovey—would you be likely to remember it?

A. I would.

Q. Is your recollection clear on this point?

A. It is.

Q. And you say that these representations by Hovey, Schramm, and Sherwood about any conversation between Hovey and Gormley at this council meeting and prior to this passage of the ordinance are not true?

(McCoy:) I object to that question. Objection sust'd.

Q. Do you remember whether Francis B. Law, who has given his testimony here, was present during the whole of this council meeting?

A. He was.

Q. Was Michael Gormley there during the whole of the council meeting?

A. Yes, sir.

Q. How long have you known the land S. W. ¼ of sec. 7, t'sh'p 42 N., of range 13 E., of 3rd prin. mer., in the village of Glencoe, county of Cook, State of Illinois, called Gormley's Addition to Glencoe?

A. Since 1869.

Q. State, if you know, whether that land is now fenced; and, if so, how long it has been fenced and who fenced it.

A. I don't know who fenced it; it was fenced when I first knew the property and the last I knew of it; within a year it was fenced.

Q. Any streets running through the land—through the enclosures of the fence?

A. No, sir.

334 Q. Do you know whether there are any gateways in the fence to allow teams to go in and foot passengers to go in?

A. There is.

Q. Do you know how long Mr. Gormley has lived on this land?

A. Not of my own knowledge, only since I first saw him in 1869.

Q. Lived there with his family?

A. Yes, sir.

Q. In the same house that he lived in in 1869?

A. Yes.

Cross-examination:

Q. What is your name, residence, and occupation?

A. A. W. Fletcher; Highland Park; lumber and coal business.

Q. Are you still in business there?

A. Yes.
Q. On your own account?
A. Yes.
Q. How long were you a member of the council of the village of Glencoe?
A. I think for three terms.
Q. During what years?
A. 1881–1882. I was a member those years, and perhaps before that.
Q. Is your memory pretty good?
A. Tolerably good.
Q. I wish you would remember the other year you were a member of that council.
A. I could not say exactly.
Q. Have you a distinct recollection of what occurred at the council meeting on the 3d of January?
A. Yes; pretty good.
Q. Your memory is better on some points than on others?
A. When I have as much trouble as we had over this my memory is pretty good.
335 Q. You had trouble over this, then?
A. Yes.
Q. When did you first learn there was trouble about it?
A. About three or four days after its passage.
Q. Do I understand you to state that no such things occurred as have been stated by Mr. Hovey, Mr. Sherwood, and Mr. Schramm, or simply that you do not remember of such conversation?
A. There was no conversation had during the consideration of the ordinance.
Q. Was there at the meeting?
A. No; not until after the meeting.
Q. Was there after the meeting?
A. Yes.
Q. The conversation did take place after the meeting?
A. Yes.
Q. Not as stated by them, but after the meeting.
A. Yes.
Q. What was that conversation?
A. Mr. Hovey asked Mr. Gormley if Culver was interested in the affair of vacation.
Q. So that is all?
A. That is all Mr. Hovey asked him.
Q. Well, what was the rest of the conversation? Was there anything said about who owned this land in Gormley's Addition?
A. Not that I heard.
Q. There might have been something of that kind without your hearing it, during the meeting, might there not?
A. Not during the passage of the ordinance.
Q. You voted for this ordinance, did you not?
A. Yes, sir.
Q. Did you understand at the time you voted for the ordinance

that Michael Gormley owned property fronting on these streets sought to be vacated by that ordinance?

336 (Objected to as immaterial and irrelevant.)

A. I don't know of my own knowledge whether he did or not.

Q. What was your understanding on that subject?

(Objected to as immaterial and utterly irrelevant.)

A. The only understanding we had was to get rid of taking care of the streets.

Q. What was your understanding about who owned the property fronting on these streets?

(Objected to as immaterial and irrelevant.)

A. I have no knowledge of my own and made no inquiries.

Q. I wish you would answer the question that I have asked you three times now.

A. I don't know that I understand your question.

Q. What was your understanding of who owned this property fronting on these streets?

A. I supposed he owned it.

Q. That Michael Gormley owned it?

A. Yes.

Q. From what do you form your supposition?

A. By living on it.

Q. By your living on it?

A. No, sir.

Q. Do you live on any of the land in that division?

A. No, sir.

Q. You mean by the fact that Michael Gormley lived on the land?

A. Yes.

Q. Have you heard of Mr. Clarke having any interest in that land prior to the time you voted for that ordinance?

A. I did not.

337 Q. You say you voted for that ordinance to get rid of taking care of the streets, as I understand you?

A. Yes.

Q. Had the council any trouble in taking care of those streets prior to that time?

A. We had in other streets in the village.

Q. Had you in those streets in that subdivision?

A. No, sir.

Q. Had you talked with Mr. Gormley of this ordinance prior to its passage on that evening?

A. I think I had, in July or August before.

Q. Did you know that the ordinance was to be presented on that evening, and was presented?

A. Yes.

Q. When did you learn that fact?

A. After I got to the council chamber.

Q. From whom?

A. From Mr. Law reading it.
Q. Had you not known of it before that?
A. No, sir; I had talked about the vacation of the streets to other councilmen.
Q. What other councilmen?
A. To Mr. Fahd.
Q. Any one else?
A. I might have.
Q. Do you recollect of any one else?
A. I think, to Mr. Dennis.
Q. When did you talk to Mr. Fahd about that vacation?
A. During the summer.
Q. Was no statement made by Mr. Gormley during that meeting as to the fact that he owned those streets that were about to be vacated?
338 A. No, sir.
Q. Was there any argument or discussion on the subject of the passage of the ordinance?
A. There was not.
Q. Any remarks made by any one?
A. No, sir.
Q. Do you remember who moved the passage of the ordinance?
A. Mr. Law.
Q. Do you remember that Mr. Francis B. Law was present during the whole of that meeting?
A. I sat next to him.
Q. You have a distinct recollection on that point, have you?
A. Pretty good.
Q. Whom have you talked to recently about the testimony you were to give in this case?
A. No one.
Q. Who requested you to come here and give your testimony?
A. Mr. Gormley.
Q. How long since?
A. Last evening.
Q. Did you have any talk with him at that time?
A. Yes.
Q. How long?
A. About half an hour, I should think.
Q. Did you talk anything about this ordinance?
A. I asked him what he wanted me for, and he said it was that ordinance about the vacation of the streets in Glencoe.
Q. Did he ask you what you remembered about it?
A. No, sir.
Q. Was anything said about what occurred at that meeting by either of you?
A. I don't think there was.
Q. Are you a married man?
A. Yes, sir; and lived at Glencoe.
Q. Where do you live?
339 A. Highland Park.

Q. How long have you lived there?
A. About two years.
Q. How long did you live at Glencoe?
A. From '69 to '83.
Q. Who else was present at that council meeting?
A. Mr. Hovey, Mr. Dennis, Mr. Law——
Q. Any one else?
A. Mr. Day.
Q. Was Mr. Sherwood there?
A. Yes, sir.
Q. Mr. Schramm, Frederich, the one that you have spoken about, the one whose testimony you have heard read this afternoon?
A. I don't remember him being there.
Q. Any one else that you remember being there?
A. I think there was a Mr. Detrich there.
Q. Well, do you remember any one else?
A. I don't think of any one else at present.
Q. And the only reason that you supposed Gormley owned that land was because he lived on it?
A. That was one of the reasons.
Q. What others?
A. That he worked it.
Q. Any others?
A. That he had possession of it; that is all I judged from.
Q. Those were the only reasons that you had; was that so?
A. Yes, sir.

A. W. FLETCHER.

Subscribed and sworn to before me—

JOHN I. BENNETT,
Master, &c.

340 Thereupon the defendants produce before the master MICHAEL GORMLEY as witness, who, being duly sworn, testifies as follows, to wit:

Q. Your name, age, residence, and occupation.
A. Michael Gormley; age, 53—going on 54; residence, Glencoe, and occupation, farmer.
Q. Mr. Gormley, how long have you known the land S.W. ¼, sec. 7, township 42 N., of range 13 E., 3d prin. mer., village of Glencoe, county of Cook, State of Ills., now known as Gormley's Addition to Glencoe?
A. I think I have known it 43 years—since last April—since I first came there.
Q. How long have you lived on these premises?
A. Ever since.
Q. How long have you lived in the present house in which you now live?
A. Since the fall of 1852 or the spring of 1853.
Q. When were you married?
A. The first—12th February, 1854.

Q. Did you live with your wife?
A. Yes; till she died.
Q. When was that?
A. 12 years ago last December—I think the 20th of December—12 years.
Q. Did you have any family?
A. Yes.
Q. Family live with you in this house?
A. Yes.
Q. And have been right along?
A. Yes.
Q. When were you married the second time?
A. Ten years ago—about ten years.
341 Q. Your second wife lives with you and has been all the time since you were married?
A. Yes.
Q. What children have you residing on this place?
A. Two—boy and girl, twins—8 years old the 17th of last April.
Q. How long has this quarter section been fenced in?
A. Somewhere about 27 or 28 years.
Q. Who fenced it in—who has kept up the fences since they were put up?
A. I did.
Q. Are you keeping them up now?
A. Yes.
Q. Do you claim a homestead in this property?
A. Yes.
Q. Is Eliza Gormley, the other defendant in this case, your wife?
A. Yes.
Q. Have any streets been built in this 160 acres inside the fences?
A. No.
Q. What have you around this house where you live?
A. Trees and shrubs, cisterns, barns, and shops.
Q. How do you come inside the fence when you come home?
A. I've got a gate.
Q. How do you drive a team in?
A. Open the gate; when I come in and out I drive in.
Q. What is this land in controversy worth?
A. It ought to be worth $20,000.
Q. Were you present at the council meeting at the village of Glencoe, held on the 4th day of October, 1881, at which time an ordinance was passed for the vacation of Adams St. from Grove St. to Bluff St.?
A. I was.
Q. Was any inquiry made of you at that council meeting as to the ownership of the land?
A. No, sir.
342 Q. Did you make any reference in the council meeting as to the ownership of that land?
A. No, sir; I was not asked by anybody.
Q. This is supposed to be a strip of land on which you live?

A. Yes, sir.

Q. State whether you were present at the meeting of the council of the village of Glencoe the third day of January, 1882, at which time an ordinance was passed to vacate certain streets in Gormley's Addition to the village of Glencoe.

A. I was.

Q. State what occurred at that meeting with reference to the passage of this ordinance. State also what was done and what conversation, if any, was had between you and the president of the council or any of the members of the council at that meeting. State the whole of it.

A. Well, I sat next to Mr. Law, and after everything had been passed—or I supposed that everything was passed—I handed him this ordinance, and he got up and read it, and some of the members made a motion to have it adopted and passed, and the yeas and nays were called and it was passed, and immediately after its passage there was another motion to adjourn, as this was about all there was to be done in the meeting, and the meeting adjourned, and there was no question put to me about my owning the property.

Q. Did you volunteer any statement as to the ownership?

A. No, sir; no, sir; there was not a single question asked by any one at that meeting.

Q. You have heard read, have you not, the testimony of Augustus H. Hovey, Porter Sherwood, and Frederick Schramm given in this case?

A. Yes, sir.

Q. State whether the statement which they make about a
343 conversation occurring between you and Augustus H. Hovey and remarks made by Augustus H. Hovey to the council are true as they have stated them.

A. No, sir; they are not true.

Q. Are you positive of this?

A. Yes, sir; there was nothing of the kind—not at that meeting.

Q. Who were present in the council as members of the council and as officers of the council at the time the ordinance was presented up to the conclusion of the meeting?

A. Well, there was the president, Mr. Dennis, Mr. Law, Mr. Sherwood, and the clerk.

Q. State if you did have any conversation with Augustus H. Hovey similar to what is given in his testimony at some other time.

A. Yes, I did; two or three days after, at your office, 153 Randolph St., room 1. Mr. Herford was present at that conversation.

Q. And this conversation was after the passage of the ordinance?

A. Yes; two or three days after. It was the first time I came to the city after the passage of the ordinance. Yes, three days; it might have been three days, but I don't think it was after. This was the first conversation I ever had in any way with Mr. Hovey.

Q. Did you hear Francis B. Law, in the council meeting of January third, 1882, make any inquiry as to whether any one else than yourself was interested in the passage of this ordinance or in the

property abutting the streets proposed to be vacated or in the property over which the streets ran?

A. I never heard any, and if there was anything of that kind I never heard it.

Q. Then you did not make any answer to any such inquiry of Law's, if he did make any such inquiry?

A. No, sir.

344 Q. Did you send in any petition to the council for the passage of this ordinance of January 3d, 1882?

A. No, no; I never did.

Cross-examination:

Q. Who has paid the taxes for the last few years on that land?

A. I don't know; I haven't.

Q. You signed the deed of trust which afterwards passed into the hands of Mr. Clarke, did you not?

A. Yes sir.

Q. You stated, Mr. Gormley, that you claimed a homestead in this property?

A. Yes, sir.

Q. In what portion of it do you claim a homestead?

A. Well, sir, where I live I claim it.

Q. Anywhere else?

A. Well, I don't know how I can answer that question?

Q. Well, how much of a homestead do you claim there?

A. Well, I claim all the law gives me. I don't know how I can answer it in any other way.

Q. Well, how much land do you claim as a homestead?

A. Well, that question will have to be decided by the court. I can't answer it. I don't know.

Q. Do you claim a homestead in all the streets in the quarter section?

A. I claim a homestead in the street. What the trouble would be is to know which way the court might say as to how far the homestead would go.

Q. Do you claim a homestead in any of the property which was covered by the trust deed to Loeb?

345 A. No; I do not. I don't live on any of them. Where I live I suppose it is on a street or where there would be one.

Q. You are in hopes of the whole quarter section, are you not, of the part which Clarke claims?

A. No.

Q. Using it as a farm or pasture?

A. Yes, sir.

Q. How many acres of ground are covered by your house, barns, shop, trees, and shrubs surrounding your house?

A. Well, between those two blocks.

Q. Well, how much would be the dimensions of it?

A. I don't know.

Q. Well, approximate it as nearly as you can?

A. I can't.

Q. Do you think there would be more than one hundred feet in width?

A. No.

Q. How deep would it be?

A. Well, three or four hundred feet deep; perhaps five hundred. Well, it is pretty near five hundred feet; it may be five hundred feet.

Q. You say this land ought to be worth $20,000?

A. Yes.

Q. How much is it worth?

A. I have no means of knowing. I have never sold any of it.

Q. In your opinion, is $20,000 the fair cash value of that land at present?

A. Well, if I had everything all straightened out I would not take $20,000.

Q. Do you have any idea that that land could be sold for more than $10,000?

A. What are you talking about?

Q. How much do you suppose it could be sold for?

A. The whole quarter section?

Q. Yes.

346 A. It would fetch $25,000 if things were all straight.

Q. Now, you say you were at this council meeting in January, 1882, when an attempt was made to pass an ordinance vacating certain streets in that quarter section?

A. Yes.

Q. There was nothing said about your being the owner or your having interest in that land?

A. No, sir; no, sir. No person whatever asked me such a question.

Q. Was anything said by anybody else on that subject?

A. No, sir; I think I would be likely to hear anything that was said.

Q. You heard Mr. Law's testimony here this afternoon, did you not?

A. Yes.

Q. You sat next Mr. Law at that council meeting, did you not?

A. Yes.

Q. You heard him say here to-day that he asked the question as — whether or not anybody else was interested and somebody answered?

A. I heard him testify so.

Q. You have no recollection of such an occurrence as that?

A. No, sir; I haven't.

Q. Now, you say you had a conversation with Hovey two or three days after this ordinance was passed, a conversation Hovey testifies to as having occurred about then?

A. Yes; that was the first he had with me.

Q. Well, in two or three days after the ordinance was passed you did have such a conversation as Hovey has testified to substantially, did you not?

A. Well, it is similar; it is not just exactly—I've not got it the way he has, but it is similar in substance.

Q. How old are —, Mr. Gormley?

A. 53—going on 54.

347 Q. Have you a good memory?

A. Tolerable memory—I suppose you might call it a fair memory.

Q. Is your memory as to conversation pretty good?

A. Well, tolerably good.

Q. Can you generally remember a conversation three years after it has occurred and remember about what was said?

A. Well, I can't remember conversation-, that is true, but I do remember pretty well the conversation that took place then.

Q. Do I understand you to swear positive that nothing occurred at that council meeting?

A. I say that nothing of the kind was said at that meeting—nothing of the kind. After the council meeting adjourned then there was something, but not during the session.

Q. If there was you don't remember it?

A. Well, I would remember it. I know there was not any conversation before, but after the council adjourned then there was a conversation that night.

Q. What was that conversation?

A. Well, just after the council adjourned after this ordinance was presented and it was moved for its passage and they all answered "aye," and after it was declared adjourned, the very moment the council adjourned, Mr. Hovey rose from his chair and came over to where I was sitting and asked me how Culver would be interested in this transaction, and I told him that Culver had nothing to do with it. That was after the council had adjourned.

Q. Was that all?

A. Yes; that was all.

Q. You did not claim to own the property abutting on these streets, did you?

A. No, sir.

Q. But you did claim to own the streets; is that so?

A. Yes.

348 Q. And those streets that were sought to be vacated surrounded a good many of the blocks that Clarke claimed to own, didn't they?

A. Yes.

Q. You don't know of any means of access to those blocks which Mr. Clarke would have except from those streets?

A. No, sir.

Cross-examination:

Q. You do claim the land in all of those streets that have been vacated in fee yourself?

A. Well, I don't know how the law will settle it.

MICHAEL GORMLEY.

Subscribed and sworn to before me—

JOHN I. BENNETT,
Master, &c.

SEPTEMBER 21ST, 1885—2 p. m.

Parties met pursuant to agreement.

Present: Charles E. Pope, Esq., of counsel for complainant, and Morton Culver, Esq., of counsel for defendant, and Frank C. Smith, Michael Gormley, and Frank Schramm, witnesses called by and upon the part of the complainant.

And the said FRANK C. SMITH, recalled, examined in chief by Mr. POPE, testifies as follows:

Q. You are the same Frank Smith who has before testified in this case?

A. Yes, sir.

Q. Do you know who has paid the taxes upon the land in controversy in this case for the last few years?

A. Yes, sir.

Q. Who?

A. I have paid them.

Q. For whom?

A. For Edward Clarke and Alfred Corning Clarke.

Q. Edward Clarke being the father of Alfred Corning Clarke?

349 A. Yes, sir.

Q. And Alfred Corning Clarke being the plaintiff in this case?

A. Yes, sir; I paid the taxes for Edward Clark until he died and for Alfred afterwards.

Q. Please state from what time up to what time you paid the taxes.

A. From April 23d, 1880, up to and including May 1st, 1885.

Q. During this period have you paid them continuously?

A. Yes, sir; I have.

Q. Have you the tax receipts for these taxes?

A. I have.

Q. Will you please produce the receipts and make them a part of your testimony in this case?

A. I will.

Complainant now offers in evidence the original tax receipts for taxes paid upon this land in controversy during the period mentioned by the witness.

It is understood and agreed that copies may be made of the tax receipts to be introduced in evidence, provided that the originals are produced on the trial.

Q. Have you ever been upon or near the premises in question?

A. I have.

Q. Do you know whether there have been any streets in Gormley's Addition to Glencoe—any streets laid out or thrown up in Gormley's Addition to Glencoe?

A. Yes, sir.
Q. State what streets.
A. Bluff St., Washington avenue; I cannot answer as to any of the rest; it has been so long ago.
Q. Do you remember of ever seeing any sidewalks or remains of sidewalks on this subdivision?
A. Yes, sir.
Q. Where?
A. On Bluff street.
Q. From what point to what point?
350 A. Well, I think there is a sidewalk or the remains of a sidewalk on the west side of Bluff street from South avenue to Adams street; a part of it is gone.
Q. What was done in the work of laying out these streets which you speak of that you remember?
A. The streets show now that they were once thrown up, but the grass has grown over them.
Q. In what way do the streets show they were once thrown up?
A. Well, the ploughed lines of the streets are there, and they are oval in shape.
Q. Do you remember of any other streets laid out there in the subdivision or remains of sidewalks or where there is any sidewalk?
A. No; I do not.

Cross-examination by Mr. CULVER:

Q. From what point to what point, if you know, did you see Bluff St. or any portion of it graded or apparently graded?
A. From South avenue to Adams street.
Q. What part of Washington avenue did you see graded, if any?
A. From Bluff street to Grove street, I think.
Q. When you saw this did you see a fence across the east end of Washington avenue? Was there a fence there?
A. I do not know.
Q. Will you swear that there was not?
A. No, sir.
Q. Will you swear that there has not been a fence for the last 20 years?
A. No.
Q. Was there not a fence across the north end of Bluff street?
A. Yes, sir.
Q. You saw this at the same time you saw what you
351 thought to be a street?
A. Yes, sir.

COUNSEL FOR DEFENDANT: I now move to strike out all the evidence of this witness because it is not competent under the bill and it is irrelevant.

Objection overruled. Exception by counsel for defendant.

Mr. POPE: I offer in evidence a duly certified copy of the order of affirmance in the supreme court in the State of Illinois in the

case of Michael Gormley against John L. Day, on error to the appellate court, first district of Illinois.

Mr. CULVER: I object to the admission of this document because it is dated the 10th day of September, 1885, and subsequent to the filing of the bill in this case, and it is not competent evidence, and because, further, that this paper is not certified as required by the laws of the United States.

Objection overruled. Exception by counsel for defendant.

352 Copy.

CHICAGO, *April* 23, 1880.

Received of Edward Clark, by Thomas E. Patterson, 188 Dearborn St., eighty-seven $\frac{75}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes, due for the year 1879, on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	Sec.	T.	R.	Acres.	Sub lot.	Lot.	Block.	Valuation.	Total taxes.
								Dolls.	*Dolls. Cents.*
Gormley's Add. to Glencoe	.....	.....	.....	.....	.....	3 to 6	6	.....	75
	.....	.....	.....	.....	.....	11, 12	"	.....	37
	.....	.....	.....	.....	.....	.....	3 & 5	282	11 02
	.....	.....	.....	.....	.....	.....	8 to 23	1,427	55 82
Culver & Johnson's Add. to Glencoe	.....	.....	.....	.....	.....	6 to 24	24	96	4 32
	.....	.....	.....	.....	.....	1 to 22	3	286	11 55
	.....	.....	.....	.....	.....	7 to 10	6	48	1 96
	.....	.....	.....	.....	.....	13 to 16	"	48	1 96
									87 75

(Signed) W. T. JOHNSON,
Co. Collector.

Interest @ — per cent.
Costs ——.

—— ——, *Collecting Clerk,*
By GLANBRAN.

353 Copy.

COUNTY COLLECTOR'S OFFICE,
COOK COUNTY, STATE OF ILLINOIS,
CHICAGO, *April* —, 1881.

Received of Edward Clark, by Thos. E. Patterson, 188 Dearborn St., seventy-nine $\frac{40}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes, due for the year 1880, on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	S.	T.	R.	Acres.	Sub lot.	Lot.	Block.	Valuation.	Total taxes.	
								Dolls.	*Dolls.*	*Cents.*
Gormley's Add. to Glencoe.—Lots 1-24, blk.3; lots 1-20, blk. 4, & 1-20 blk. 5; lot- 1-24, blk. 8; 1-24, B. 9; 1-24, B. 10; 1 to 24, B. 11; 1, 20, B. 12; 1 to 20, B. 13; 1 to 24, B. 14; 1-24, B. 15; 1 to 24, B. 16; 1-24, B. 17; 1-24, B. 18; 1-24, B. 19; 1-24, B. 20; 1 to 20, B. 21; 1-24, B. 22; 1-24, B. 23.	.....	.....	.....	.....	.....	3 to 6	6	18		68
	.....	.....	.....	.....	.....	11 & 12	"	9		34
	.....	.....	.....	.....	.....	.....	3 to 5	279	10	29
	.....	.....	.....	.....	.....	.....	8 to 23	1,288	47	59
	.....	.....	.....	.....	.....	1 to 24	24	87	3	21
Culver & Johnson's Add. to Glencoe	.....	.....	.....	.....	.....	1 to 22	3	312	10	99
	.....	.....	.....	.....	.....	1 to 10	6	120	4	50
	.....	.....	.....	.....	.....	13 to 16	"	48	1	80
									79	40

Refunded on this receipt two $\frac{70}{100}$ dollars, being the tax on lots 1 to 6, block 6, Culver & Johnson's Add'n to Glencoe, same having been paid in error.

W. T. JOHNSON,
Co. Collector.
W. H. JOHNSON.
W. T. JOHNSON,
Co. Collector.

(Signed)

Interest @ — per cent.

Costs ——.

——— ———, *Collecting Clerk,*

By J. E. Y.

case of Michael Gormley against John L. Day, on error to the appellate court, first district of Illinois.

Mr. CULVER: I object to the admission of this document because it is dated the 10th day of September, 1885, and subsequent to the filing of the bill in this case, and it is not competent evidence, and because, further, that this paper is not certified as required by the laws of the United States.

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Notification of Special Assessments Returned to County Collector.

Description.	Sec.	T.	R.	Acres.	Sub lot.	Lot.	Block.	Valuation.	Total taxes.
								Dolls.	*Dolls. Cents.*
Gormley's Add. to Glencoe						3 to 6	6		75
						11, 12	"		37
							3 & 5	282	11 02
							8 to 23	1,427	55 82
Culver & Johnson's Add. to Glencoe						6 to 24	24	96	4 32
						1 to 22	3	286	11 55
						7 to 10	6	48	1 96
						13 to 16	"	48	1 96
									87 75

(Signed) W. T. JOHNSON,
Co. Collector.

Interest @ — per cent.

Costs ——.

—— ——, *Collecting Clerk,*
By GLANBRAN.

353 Copy.

COUNTY COLLECTOR'S OFFICE,
COOK COUNTY, STATE OF ILLINOIS,
CHICAGO, *April* —, 1881.

Received of Edward Clark, by Thos. E. Patterson, 188 Dearborn St., seventy-nine $\frac{40}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes, due for the year 1880, on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	S.	T.	R.	Acres.	Sub lot.	Lot.	Block.	Valuation.	Total taxes.	
								Dolls.	*Dolls.*	*Cents.*
Gormley's Add. to Glencoe.—Lots 1-24, blk. 3; lots 1-20, blk. 4, & 1-20 blk. 5; lot- 1-24, blk. 8; 1-24, B. 9; 1-24, B. 10; 1 to 24, B. 11; 1, 20, B. 12; 1 to 20, B. 13; 1 to 24, B. 14; 1-24, B. 15; 1 to 24, B. 16; 1-24, B. 17; 1-24, B. 18; 1-24, B. 19; 1-24, B. 20; 1 to 20, B. 21; 1-24, B. 22; 1-24, B. 23.	.....	.....	.....	.....	.....	3 to 6	6	18		68
	.....	.....	.....	.....	.....	11 & 12	"	9		34
	.....	.....	.....	.....	.....	.....	3 to 5	279	10	29
	.....	.....	.....	.....	.....	.....	8 to 23	1,288	47	59
	.....	.....	.....	.....	.....	1 to 24	24	87	3	21
Culver & Johnson's Add. to Glencoe.....	.....	.....	.....	.....	.....	1 to 22	3	312	10	99
	.....	.....	.....	.....	.....	1 to 10	6	120	4	50
	.....	.....	.....	.....	.....	13 to 16	"	48	1	80
									79	40

Refunded on this receipt two $\frac{70}{100}$ dollars, being the tax on lots 1 to 6, block 6, Culver & Johnson's Add'n to Glencoe, same having been paid in error.

W. T. JOHNSON,
Co. Collector.

(Signed) W. H. JOHNSON.
W. T. JOHNSON,
Co. Collector.

Interest @ — per cent.

Costs ——.

—— ——, *Collecting Clerk,*

By J. E. Y.

354 Copy.

COUNTY COLLECTOR'S OFFICE,
COOK COUNTY, STATE OF ILLINOIS,
CHICAGO, *April* 2, 1882.

Received of Edward Clark, by Thos. E. Patterson, 188 Dearborn St., eighty $\frac{13}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes for the year 1881 on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	Sec.	T.	R.	Acres.	Sub. lot.	Lot.	Block.	Valuation.	Total taxes,
								Dolls.	*Dolls. Cents.*
						3 to 5	6	14	67
						6,11,& 12	"	5	22
								5	23
								5	22
						1-24	3	92	4 45
						1-20	4	92	4 45
						1-20	5	92	4 45
						1-24	8	172	8 28
						1-24	9	145	6 97
						1-24	10	100	4 80
						1-24	11	92	4 45
Gormley's Add. to Glencoe						1-20	12	60	2 90
						1-20	13	40	1 94
						1-24	14	47	2 29
						1-24	15	100	4 80
						1-24	16	100	4 80
						1-24	17	113	5 45
						1-24	18	100	4 80
						1-24	19	47	2 29
						1-20	20	40	1 94
						1-20	21	40	1 94
						1-24	22	40	1 94
						1-24	23	47	2 29
						1-24	24	86	4 16
									80 73

(Signed) W. T. JOHNSON,
Co. Collector.

O. 4 | 44.

Interest @ — per cent.

Costs ——.

BURCKY, *Collecting Clerk,*
By TOBEY.

355 Copy.

COUNTY COLLECTOR'S OFFICE,
COOK COUNTY, STATE OF ILLINOIS,
CHICAGO, *April* 2, 1883.

Received of estate of Edward Clark, by Thos. E. Patterson, 188 Dearborn St., seventy-two $\frac{86}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes, due for the year 1882, on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	Sec.	T.	R.	Acres.	Sub lot.	Lot.	Block.	Valuation.	Total tax.	
								Dolls.	*Dolls.*	*Cents.*
	.....	.....	.....	.....	.....	3	6			
	.....	.....	.....	.....	.....	4	"			
	.....	.....	.....	.....	.....	5	"	33	1	76
	.....	.....	.....	.....	.....	6	"			
	.....	.....	.....	.....	.....	11	"			
	.....	.....	.....	.....	.....	12	"			
	.....	.....	.....	.....	.....	124	3	97	3	43
	.....	.....	.....	.....	.....	120	4	84	2	98
	.....	.....	.....	.....	.....	120	5	109	3	86
	.....	.....	.....	.....	.....	124	8	181	6	40
	.....	.....	.....	.....	.....	124	9	169	5	97
	.....	.....	.....	.....	.....	124	10	120	4	24
	.....	.....	.....	.....	.....	124	11	109	3	86
Gormley's Add. to Glencoe	.....	.....	.....	.....	.....	120	12	84	2	98
	.....	.....	.....	.....	.....	120	13	72	2	56
	.....	.....	.....	.....	.....	124	14	84	2	98
	.....	.....	.....	.....	.....	124	15	109	3	86
	.....	.....	.....	.....	.....	124	16	109	3	86
	.....	.....	.....	.....	.....	124	17	120	4	24
	.....	.....	.....	.....	.....	124	18	109	3	86
	.....	.....	.....	.....	.....	124	19	84	2	98
	.....	.....	.....	.....	.....	120	20	72	2	56
	.....	.....	.....	.....	.....	120	21	72	2	06
	.....	.....	.....	.....	.....	124	22	24	2	98
	.....	.....	.....	.....	.....	124	23	72	2	56
	.....	.....	.....	.....	.....	124	24	84	2	98
									72	86

(Signed) W. C. SEIPP, *Co. Coll.*

ED. BURKE, *Collecting Clerk*,
By G. N.

356 Copy.

COUNTY COLLECTOR'S OFFICE,
COOK COUNTY, STATE OF ILLINOIS,
CHICAGO, *April* 2, 1884.

Received of A. C. Clark, by Thos. E. Patterson, 188 Dearborn St., one hundred and thirty-one $\frac{31}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes, due for the year 1883, on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	Sec.	T.	R.	Acres.	Sub lot.	Lot.	Block.	Valuation.	Total tax.	
								Dolls.	*Dolls.*	*Cents.*
						3	6			
						4	"			
						5	"			
						6	"	47	2	67
						11	"			
						12	"			
						124	3	117	6	59
						124	4	117	6	59
						124	5	117	6	59
						124	8	187	10	2
						124	9	176	9	91
						124	10	135	7	60
Gormley v. Add. to Glencoe						124	11	117	6	59
						124	12	94	5	31
						124	13	82	4	63
						124	14	99	5	59
						124	15	117	6	59
						124	16	117	6	59
						124	17	129	7	27
						124	18	117	6	59
						124	19	99	5	59
						124	20	88	4	97
						124	21	88	4	97
						124	22	99	5	59
						124	23	88	4	97
						124	24	99	5	59
									131	31

(Signed) W. C. SEIPP, *Co. Coll.*

——— ———, *Collecting Clerk,*
By GLENHAM.

357 Copy.

COUNTY COLLECTOR'S OFFICE,
COOK COUNTY, STATE OF ILLINOIS,
CHICAGO, *May* 1, 1885.

Received of A. C. Clark, by Thos. E. Patterson, 188 Dearborn St., one hundred and eighty-nine $\frac{99}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes, due for the year 1884, on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	Sec.	T.	R.	Acres.	Sub lot.	Lot.	Block.	Valuation.	Total tax.	
								Dolls.	*Dolls.*	*Cents.*
						3	6			
						4	"			
						5	"			
						6	"	67	3	39
						11	"			
						12	"			
						124	3	234	11	72
						120	4	205	10	27
						120	5	176	8	84
						124	8	234	11	72
						124	9	234	11	72
						124	10	205	10	27
Gormley's Add. to Glencoe						124	11	187	9	39
						120	12	152	7	64
						120	13	140	7	01
						124	14	187	9	39
						124	15	205	10	27
						124	16	205	10	27
						124	17	205	10	27
						124	18	205	10	27
						124	19	176	8	04
						120	20	140	7	01
						120	21	140	7	01
						124	22	164	8	23
						124	23	164	8	23
						124	24	164	8	23
									189	99

(Signed) W. C. SEIPP, *Co. Coll.*

W. B., *Collecting Clerk*,
By STENN.

358 At a supreme court begun and held at Ottawa, on Tuesday, the third day of March, in the year of our Lord one thousand eight hundred and eighty-five, within and for the northern grand division of the State of Illinois.

Present: John Scholfield, chief justice; T. Lyle Dickey, justice; John H. Mulkey, justice; John M. Scott, justice; Alfred M. Craig, justice; Benj. R. Sheldon, justice; D. G. Tunnicliff, justice; George Hunt, attorney general; William R. Mulligan, sheriff; Alfred H. Taylor, clerk.

Be it remembered, to wit, on the 15th day of May, A. D. 1885, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

MICHAEL GORMLEY } No. 1183. 19. Error to Appellate
vs. } Court, First District of Illinois.
JOHN L. DAY. }

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that that record is no error, therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein
359 assigned for error; and it is further considered by the court that the said defendant in error recover of and from the said plaintiff in error his costs by him in this behalf expended, and that he have execution therefor.

I, Alfred H. Taylor, clerk of the supreme court of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed
[SEAL.] the seal of the said supreme court, at Ottawa, this 10th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] A. H. TAYLOR,
Clerk of the Supreme Court.

STATE OF ILLINOIS,
Supreme Court, Northern Grand Division:

I, John H. Mulkey, chief justice of the supreme court of the State of Illinois, do hereby certify that Alfred H. Taylor, whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same the clerk of the supreme court of the State of Illinois within and for the northern grand division aforesaid and keeper of the record and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at Ottawa, this 10th day of September, A. D. 1885.

JOHN H. MULKEY. [SEAL.]

360 MICHAEL GORMLEY, defendant, called for recross-examination, examined by Mr. POPE, testifies as follows:

Q. Mr. Gormley, you stated upon your direct examination in answer to a question by Mr. Culver that no streets have been built in this 160 acres inside the fence. Is it not the truth that certain streets have been thrown upon within this 160 acres?

A. Well, there has been a survey through any portion of it for streets never. There have been some streets thrown up there, and that I threw up with a plow.

Q. What portions did you throw up with a plow?

A. There is a portion from South avenue to Adams street.

Mr. CULVER: How long has that street that is called South avenue been laid out?

A. About 30 years. That was laid out by the county commissioner long before this Glencoe ever came into existence.

Mr. POPE: Please take the plat and examine it and state what portions you threw up with a plow.

A. Well, this Bluff street here from Adams avenue to Valley street and Washington avenue from Adams avenue to Valley street.

Mr. CULVER: Is this graded?

A. Well, that is plowed, but it has been growing crops.

Mr. POPE: Are these the only streets or parts of streets in Gormley's Addition to Glencoe that you ever threw up or any one else ever threw up by plowing or in any other way indicated as streets?

A. Yes, sir.

Q. How did you happen to know the lines of streets?

A. I do not confess to say that I know the lines; I just measured as figures.

Q. What did you measure as figures—the figures that are shown on the plat?

A. Yes, sir.

Q. Did you consider them as feet?

361 A. That is the way I considered them.

Q. You say that no streets were ever surveyed. Do you mean the surveyor never surveyed anything?

A. Yes, sir. I gave $20 for making the plat.

Q. How do you know he never surveyed it?

A. I know because if he had surveyed I would have had to pay for it; and, another way, if he had surveyed he would have had to cut lines through; and, my living there, I certainly would have run across them in some way; and, another way, in plowing across he would have had to put stakes, and I certainly would have run across them some time, and I know I never saw them.

Q. Were you always there?

A. Yes, sir.

Q. Have you ever been away from home at any time?

A. I have never been a week from home.

Q. Have you ever been a day from home?

A. Yes, sir.

Q. You have frequently — a day from home?

A. Yes; many a day I come in and go back the same day.

Q. You paid the surveyor, didn't you?

A. I paid $20 for making the plat.

Q. The original plat appears to be made with a certificate, does it not, that he first made a survey of the premises?

Question objected to because the plat is itself in evidence.

A. Yes; the plat is in evidence.
Q. Did you pay him the $20 for making that certificate?
A. I paid $20 for making the plat.
Q. Including the certificate on it?
A. Everything on it was on when I got it.
Q. May the surveyor not have been there and made a survey when you were away from the premises?
A. No, sir.
362 Q. How do you know?
A. Well, there is no portion of a line he could have run. He would have had to cut through from north to south and east to west, and I would certainly know if a line had been run.
Q. You never discovered any traces of a survey?
A. There never has been a trace.
Q. All you know is you never have seen any traces of a survey?
A. Yes, sir.
Q. And that is the ground upon which you swear that no survey has been made; is that so?
A. I never paid for any.
Q. That is the ground upon which you swear that no survey has been made; is that so?
A. Yes; that is so.
Q. And that is the only ground?
A. Well, I say if there had been one I certainly would have known it. There couldn't have been a survey made without my knowing it.
Q. How many other parties did you sell to, Mr. Gormley, describing the property by this plat?
A. Two, I think; Fred. Root was one and a man by the name of Miller.
Q. Mr. Root is the deputy clerk of the United States circuit court for the northern district of Illinois?
A. Yes, sir.
Q. How many lots did you deed to him?
A. Well, he had two blocks, as stated here—blocks 7 & 2.
Q. You have stated elsewhere in your testimony that your house is located on Adams street. How do you know that, if no street has been thrown up or survey made?
A. No way, except to guess at it. Mr. Westerfield, when he was there, he said the same he said here; the way he could tell
363 was by seeing a street on that side and then looking the other way; the house must be there. All the way I have to get at it is that I measured just as it is measured here (indicating plat), and the house would be on that street if there was a street there.
Q. It would be on Adams street if there was a street there?
A. Yes, sir.
Q. What party other than Mr. Root did you deed to?
A. A man by the name of Miller.
Q. Who is Miller?
A. He is a German.
Q. Where does he live?

A. I do not know.
Q. What is his full name?
A. John Miller.
Q. How many lots did you deed to him?
A. Two.
Q. What block?
A. Well, I think that was in block 6.
Q. How many lots in block 6?
A. Two; I mean I sold him two.
Q. In what block are the lots you deeded to Root?
A. Block two and block 7; and I deeded to Mrs. Culver.
Q. About how many acres have you got in this subdivision?
A. You asked me that half a dozen times, and I said I didn't know.
Q. About how many?
A. It was called a quarter section, and I don't know how much less or how much more.
Q. It is called a quarter section?
A. Yes, sir.
Q. That would be about 160 acres, then?
A. If there was a full quarter there it ought to be 160 acres, but it may have been less.
Q. Do you know at what price property is selling in Glencoe by the acre?
A. It sells at lots of different figures.
364 Q. What is the highest price it has brought within the last year that you know of?
A. By the acre I don't know.
Q. Do you know of any sales within the last year by the acre?
A. No, sir.
Q. Do you know of any sales of lots within the last year?
A. Only from hearsay.
Q. What price did they bring?
A. $200 a lot.
Q. How many lots in an acre?
A. I don't know that.
Q. How many of these lots that have been sold made an acre?
A. I don't know.
Q. Do you mean to say that this land in controversy is now at the present time or at the time of the filing of this bill worth $20,000?
A. Yes, sir.
Q. On what do you base your opinion?
A. Well, I base my opinion on the way some others say they are selling.
Q. What others?
A. Mr. Culver here has been selling in Hartwell's Addition.
Q. Do you know of any sales that have been made by Mr. Culver in Hartwell's Addition?
A. No, except by hearsay; I didn't see him sell any.
Q. Do you know the rate?
A. He has been selling for $200 a lot.

Q. For cash or on time?
A. I don't know.
Q. Do you know of any other sales that have been made upon which you base your opinion as to the land being worth $20,000?
A. Only from hearsay.
Q. Are you a real estate man?
A. No, sir.
Q. Have you ever been one?
A. No, sir.
Q. You are a farmer, are you not?
A. Yes, sir.
365 Q. This property has been held by you and used as farming property, has it not?
A. Yes, sir.
Q. These two gentlemen that you have mentioned, Miller and Root, are they the only parties to whom you have sold any of this property?
A. I think Mrs. Culver got two lots.
Q. In what block?
A. In block 6, I think.
Q. Did you sell to these three parties, namely, Miller, Root, and Mrs. Culver, when you made the subdivision, describing the land by the subdivision?
A. I did, sir. It has been a good while ago, but I think that is the way.
Q. Did you tell them or did they ever know that no survey had been made of this property that you speak of?
A. No, sir; I never told them anything of the sort.
Q. You sold to them and deeded to Loeb, did you not?
A. To Loeb?
Q. Yes; by trust deed; without mentioning the fact that no survey had ever been made of this land?
A. I did not tell them that.
Q. You didn't tell anything on the subject?
A. No; he never asked anything.
Q. Had any sidewalks ever been laid on this 160 acres?
A. Yes, sir.
Q. By whom?
A. Well, at the time Root bought those lots there was a sidewalk put around them.
Q. By whom?
A. I put it down; he paid for it.
Q. On what streets?
A. Well, on Bluff street, down here as far as Adams street, and down on Washington avenue, down on these two sides of Washington avenue, and down to Valley street; from South avenue to Adams street, and——
366 Q. In other words, you encircled blocks 2 and 7 with sidewalk on both sides of the street?
A. No, sir.
Q. Only on one side?

A. On two sides—from Bluff street to Valley street on both sides of Washington avenue.

Q. How do you know who laid down the streets?

A. I don't know. I measured it.

Q. In accordance with the plat?

A. Yes; as near as I could.

Q. You have testified that your house, so far as you could judge, is on Adams street by reference to the plat?

A. That is all the way I got at it there.

Q. Do you know whether the village has done any work on these streets or sidewalks?

A. No, sir; it has not.

Q. Are you positive of it?

A. Yes, sir.

Q. Is that all the work you ever did on the street or sidewalk? Are you positive of it?

A. Yes, sir.

Q. Are you — positive of it as you are of any other part of your testimony?

A. Oh, no. There has been a ditch cut on the south side of Washington avenue, down as far as Wood street, and then north pretty near to South avenue, on the west side of Wood street.

Q. Who made that ditch?

A. Well, I had it made.

Q. Did you do it or did the village do it?

A. No; I did it.

Q. You did it yourself?

A. Well, I paid for it. I didn't do the work. The village didn't do it.

Q. Did you ask any of the village trustees or represent to any of them that they would be saved the expense of repairing sidewalks if the streets in this subdivision were vacated?

367 A. No, sir; I never represented anything of the sort to any one.

Q. Of what State are you a citizen, Mr. Gormley?

A. Of Illinois. I have been in Illinois since 1837.

Q. Do you know of what State the following persons are citizens of: John Nutt, James S. or James F. Dennis, Frank M. Van Etten, Geo. G. Hall, Augustus H. Hovey, John L. Day, Eliza Gormley, Morton Culver, and George G. Ligare?

A. Well, I can answer for Eliza Gormley. She was born in Glencoe and is a citizen of Illinois. The rest I don't know.

Q. Do you know as to where they have voted or whether they are voters?

A. I know some of them. I don't know anything about Van Etten.

Q. Do you know where John Nutt has voted?

A. Yes, sir; in the township up there.

Q. For how many years?

A. For years back.

Q. Is he living there now?

A. Yes, sir.
Q. Where is Augustus H. Hovey voting, or where did he vote?
A. He voted up there, too.
Q. Do you know of his living there?
A. Yes, sir.
Q. Do you know where he is living now?
A. In Hyde Park.
Q. Do you know anything about George G. Ligare?
A. Yes, sir; he voted there in Glencoe.
Q. Is he living there now?
A. Yes, sir; as far as I know.
Q. Do you know anything about George G. Hall?
A. Well, I know a Mr. Hall, but whether his name is George or what it is I don't know.
Q. Do you know Hall who was the trustee formerly?
A. Yes, sir.
Q. Where is he living?
A. At Glencoe.
Q. Is he a voter there?
A. Yes, sir.
368 Q. How long has he lived there?
A. Three or four years, I think.
Q. Of what state is Morton Culver a citizen?
A. Illinois, so far as I know; he has voted there in Glencoe.
Q. Is he living there now?
A. Yes, sir.
Q. When did you last pay taxes on this land in controversy?
A. Well, that I don't know.
Q. About when?
A. Maybe three or four years ago.
Q. Have you paid any tax on this land since the foreclosure by Loeb?
A. No; I don't thinkI have.
Q. You spoke about this quarter section being fenced in. Is the part of it that is now owned or the part that you conveyed to Root fenced in?
A. Yes; it is all inside of an inclosure.
Q. Do you claim that?
A. Claim what?
Q. Do you claim this land which you sold to Root?
A. No.
Q. Do you claim the land you sold to Miller?
A. No.
Q. Do you claim the land you sold to Mrs. Culver?
A. No.
Q. You spoke of your not sending in any petition to the council for the passage of the ordinance of January 3d, 1882, in your direct examination. Did you draw the ordinance for the vacation of the streets of January 3d, 1882?
A. Was that the first one or the last one?
Q. The last one.

A. Yes, sir; I did.
Q. The original is in your handwriting, is it not?
A. I think I said so before; yes, sir.

Redirect examination by Mr. CULVER:

Q. Does the fence run continuously all along the north side of this addition, along the south side of South avenue from east to west?
A. From one corner to the other; yes, sir.
369 Q. How long has it—how many years?
A. Twenty-eight or thirty years.
Q. There is no opening at the north end of what is called Bluff St.?
A. There is no opening anywhere except by gates or bars.
Q. The fence is continuous on the east side, is it, then?
A. Yes, sir.

Mr. POPE:

Q. You say that you employed Alexander Wolcott to make you a plat of this subdivision. Did you tell him you did not want a survey made of it?
A. Yes; that was the understanding, that he was — to make any survey.
Q. Did you tell him that you wanted him to make a plat of the subdivision and certify that it was a correct representation of said subdivision?
A. Well, he said he would do that.
Q. Did you ask him to do that and without making a survey?
A. Yes, sir.
Q. Did you know that he was going to state on his certificate that he had made a survey of it?
A. Well, I didn't look as to that.
Q. Do you know whether he has ever made any survey of land in that vicinity?
A. Yes; I know that he has.
Q. When did he make a survey of land in that vicinity?
A. Well, some 12 or 14 years ago he surveyed Culver aand Johnson's Addition.
Q. Do you know whether he based his certificate upon his previous knowledge of that locality or not?
A. I don't know, sir.
Q. You don't know anything about it?
A. No, sir.
370 Q. Do you mean to swear that you told him you were going to make a subdivision of the property, and that you wanted a plat made of it, and that you didn't want him to make a survey of it?

Question objected to because what the witness means to swear to is best shown by what he says.

A. Well, no; I didn't say that in those words to him. I wanted to see what he would charge for making a plat of it. I didn't have money enough to pay for all this staking and going through, and I

asked him what he would charge to make a plat, and he told me if I would give him $20 he would make the plat.

Q. Is that all that was said between you?

A. I don't recollect; it is so long ago. I cannot recall every word that was said between him and I. I know I gave him the $20, and that is all I ever did give him for that.

Q. Then, as I understand you, you went to him and told him you wanted a plat made of that subdivision; that you were going to make a subdivision and you paid him $20; is that all?

A. Yes, sir.

Q. That is all you said to him on the subject, that you remember?

A. I say I don't remember anything further; there might have been more conversation.

A. Is that all you can remember?

A. I say yes; that is all I can remember, as far as I can recollect.

MICHAEL GORMLEY.

Subscribed and sworn to before me—

JOHN I. BENNETT,
Master, &c.

FRANK SCHRAMM, being first duly sworn, examined in chief by Mr. Pope, testified as follows:

371 Q. Do you occupy any official position in the village of Glencoe, Cook county, Illinois?

A. I am street commissioner.

Q. How long have you been street commissioner?

A. Since 1882; I have been in before for several years—I think two years.

Q. Are you familiar with the property that is known as Gormley's Addition to Glencoe?

A. I know whereabouts it lies.

Q. You have been there?

A. Yes, sir.

Q. Do you know whether any work has been done by the village upon any portion of Gormley's Addition to Glencoe, or whether any streets have been thrown up there?

A. Well, yes, sir; South avenue—that is right on the north side of Gormley's Addition—and I presume some of the streets is in Gormley's land; I don't know about that, though.

Q. Half the land is in Gormley's land?

A. I wouldn't swear to that, but I think so; it is South avenue.

Q. What is known as South avenue—has anything been done on that?

A. I have worked on that.

Q. What have you done on South avenue?

Mr. CULVER: We don't make any claim on the ground in South avenue, because it has been a public street for the last 30 years. We don't claim that we fenced in South avenue either; we never claimed that.

A. I took some of the ground down from the knoll into the hollow, and I think I put a small culvert in there.

Q. While you were in the employ of the village and acting for the village?

A. Yes, sir.

Q. What other streets or parts of streets have you ever done any work on?

A. On Grove street.

372 Q. That is on the east?

A. Yes, sir; I have repaired a little sidewalk there on Grove street, a small piece of sidewalk, about three-quarters of a block. I have repaired that sidewalk a very little, and then on Grove street I have put in one culvert for sure, and I think two of them, and then we have worked poll-tax on Grove street.

Q. Have you ever done any work upon any other portion of the subdivision?

A. Not what they claim to be fenced in, only I went in there with a snow-plow last winter. I drove in from South avenue to Washington avenue, and then went one block west, down as far as Valley street. I drove in from South avenue into Bluff street, and then down Washington avenue to Valley street.

Q. Was there any sidewalk there?

A. Yes, sir.

Q. Where was there a sidewalk?

A. On Bluff street there is a sidewalk, on the west side.

Q. From what point to what point?

A. From South avenue and runs to Adams avenue, on the west side.

Q. Do you know of any other sidewalks or remains of sidewalk in Gormley's Addition to Glencoe?

A. On Valley street there is a sidewalk to Adams avenue, on the east side.

Q. Do you know whether there had been any other sidewalks in Gormley's Addition to Glencoe?

A. On Washington street there is a sidewalk from Bluff street to Valley street, on both sides, and on Adams avenue from Bluff street to Valley street sidewalk on the north side.

Q. Did you see any remains of sidewalks in any other places?

A. You might call most of it remains, because they are all broken up pretty bad. I wouldn't say that there was more sidewalk

373 than what I have seen there.

Q. Can you tell me about when you did this work upon these different streets you have mentioned?

A. Well, in 1882 we worked poll-tax there, but the day—I couldn't give that now.

Q. Where did you work the poll-tax in 1882?

A. On Grove street.

Q. Did you do this work over a year ago?

A. Yes; that is over a year ago, this on Grove street here. I don't know about South avenue. I couldn't exactly state that, but I think it is over a year ago.

Q. And did you do it after the year 1874?
A. Yes; it was in 1882 I went in as street commissioner.
Q. You did it after you were put in as street commissioner?
A. In 1877 and '78.
Q. Then whatever you did was done after 1877 or in 1877, between 1877 and 1878?
A. During 1877 and 1878 and 1882 until now.

Cross-examination by Mr. CULVER:

Q. From whom did you get this memorandum from which you have been testifying here?
A. I got them myself.
Q. From whom?
A. I went down on the ground with my map and took these. It is my own handwriting. I copied it down myself.
Q. Did any one give you the information, tell you about when you did this work that you have been swearing to?
A. Tell me when I did it?
Q. Yes.
A. There are some people down there who wanted to have the work done on that street, so I just gave them the privilege of working poll-tax on that street.
374 Q. Did you get any of this information that you have got on your paper here from which you have been testifying from some other person?
A. I might have from that black Frenchman, Moore.
Q. How long has South avenue been a public road, that you know of—this street called South avenue?
A. Well, I wouldn't swear how long it has, but it has been open just about as——
Q. Can you remember the time that it has not been a public road?
A. Well, I took it to be a public road ever since I remember.
Q. How long?
A. Thirty-three years; I was born in '52.
Q. Do you remember the time when this road called South avenue has not been a public road and traveled by the people?
A. No, sir; I don't remember.
Q. Now, along the south line of this road called South avenue do you know the time when there has not been a fence on Gormley's land?
A. I do not remember that there has not been any fence there.
Q. You know that it has been fenced, don't you?
A. Yes, sir.
Q. You know that it is fenced now, do you not?
A. There is something like a fence around there now.
Q. And you know, too, don't you, that this space what is called Bluff street, and the space across the north end of what is called Valley street, and the space across the north end of what is called Wood street is now fenced, don't you?
A. Yes, sir.

Q. Do you know the time that it has not been fenced?

A. No; I do not.

Q. Don't you know, too, that the north end of this strip of land called Prairie street is fenced and has been fenced as long as you remember—the northwest corner of Gormley's 160?

A. I don't know much about that; I was looking for that and couldn't find it.

Q. You did not find any road running down on the west side?

A. No, sir.

375 Q. When you say you drove the snow-plow through from Grove street west through Washington avenue didn't you have to take a fence down to get in there?

A. Bars, I think; one gate and one "bars," I suppose, if I am right.

Q. You had to open a gate to get in?

A. Yes, sir.

Q. Don't you know, as a matter of fact, that there is a continuous fence the whole length of Grove street, on the west side of it, from South avenue down to Jackson avenue?

A. Yes, I believe there is.

Q. Do you know the time when there has not been a fence along there?

A. No; I do not remember.

Q. Why did you run a snow-plow through this land at all?

A. On account of John Jost living there. He wanted to have some way of getting his boy to school, and probably for his own benefit.

Q. Did you run the snow-plow down to Gormley's house?

A. Not to Gormley's house, but as far as the gate where Gormley goes in.

Q. Don't you know that this strip of land 66 feet wide, called Grove street, was laid out 12 or 13 years ago, and that a man named Johnson and I graded that street as far as it is graded?

A. I couldn't remember who graded it; it is a good many years ago.

Q. The village never graded it, that you know of, did it?

A. Not that I know of, only what little repairing we did on Grove street.

Q. All you ever did was to repair one culvert down to the middle of that street, didn't you, near Ira Brown's land, where there is a hole in the street?

A. Yes; I put in a culvert there.

Q. There had been one in before, hadn't there?

A. Yes, sir.

Q. Don't you know that I put it in?

A. No, sir; I don't know. I think that was done before I

376 was street commissioner; so I don't know anything about it.

Q. Has the village done any work on what is called Grove street south of the line of Jefferson street?

A. Yes; we have done work down that way.

Q. Don't you know, as a a matter of fact, that Ira Brown graded half of that street south of Jefferson avenue, and that the village did not do it?

A. I do not know that.

Q. Is it graded at all south of Jefferson avenue?

A. I should think it ought to be graded.

Q. The village never did it, that you know of?

A. I think it is graded as well as any other street there.

Q. The village didn't do it, that you know?

A. Not that I know of; that was done before I was in

Q. You won't swear whether Ira Brown did it or not?

A. No, sir.

Q. Don't you know, as a matter of fact, that this land here called Washington avenue has been cultivated and crops are raised on it between Grove street and Bluff street? Don't you know that corn and oats are grown there, and that hay is cut from there?

A. Well, I couldn't exactly say what was there, but I know it has been used. It was hay or corn or something before the street ever was there.

Q. I mean since then—within the last three or four years?

A. O, I don't remember that now.

Q. Will you swear that it has not been cultivated within the last three or four years?

A. No, sir.

Mr. POPE: Would you swear that it has been cultivated?

A. No, sir.

377 Redirect examination by Mr. POPE:

—. Mr. Culver spoke about your memorandum to which you referred. Did you go upon the ground to get the information that you have just testified to?

A. Yes, sir.

Q. You spoke of obtaining some of it from Moore. What information did you get from him?

A. He is a man who lives just outside of the corporation, and the road there is kind of bad once in a while in the spring, and he wanted me to take ground off from the knoll and bring it down into the hollow, and I did some work there on account of his bothering me so much, and some others wanted me to do some work there.

Q. Do you mean to say that you got any of the information that you testified to here from this man?

A. No, sir.

Q. The information you testified to here, you found out that yourself and did it yourself?

A. Yes, sir.

Q. Nobody else told you this?

A. No, sir.

Q. You investigated it yourself?

A. Yes, sir; I did the work myself—all that was to be done.

By agreement of parties, further taking of testimony adjourned till Monday, September 28, at 3 p. m.

THURSDAY, *Oct.* 1, 1885.

Parties met pursuant to adjournment.

FRANK SCHRAMM, recalled on behalf of complainant, examined by Mr. POPE, testified as follows:

Q. Mr. Schramm, will you state whether any portion of Washington street is graded, in Gormley's Addition to Glencoe?

A. Yes, sir; it is graded from Grove street to Wood street on Washington street, both sides of the street, except about 80 feet west of Grove St. not graded.

Q. How is it in regard to ditches on Washington street?

378 A. Well, it is ditched on both sides, the way a road-bed ought to be, and then the ground is thrown up in the middle.

Q. Then it is ditched on both sides of Washington street between the two streets you have mentioned?

A. Yes, sir.

Q. And then the dirt is thrown up in the middle?

A. Yes, sir.

Q. Is Adams avenue of Gormley's Addition to Glencoe graded at all?

A. Yes, sir; from Bluff street to Valley street.

Q. How do you know about Washington and Adams streets being graded?

A. I went over it myself.

Q. When?

A. Well, something a little over a week ago, before I was in here, and yesterday I went over it again.

Q. How is Adams street graded?

A. It is graded the same as Washington street—ditches on both sides and then dirt thrown up in the middle.

Q. Is Wood street, in Gormley's Addition to Glencoe, graded?

A. The west side is graded to Washington avenue, the east side is graded about 50 feet.

Q. Where does the grading commence on Wood street, where it extends to Washington avenue?

A. It begins on South avenue just at the South avenue ditch, outside of the fence, and inside about 50 feet is graded.

Q. When did you examine Wood street?

A. Yesterday.

Q. All these streets are in Gormley's Addition to Glencoe?

A. Yes, sir.

FRANK SCHRAMM.

Subscribed and sworn to before me—

JOHN I. BENNETT, *Master, &c.*

379 FRIDAY, *Oct. 2nd*, 1885—2 p. m.

WILLIAM H. CONDON, witness called on behalf of complainant, being first duly sworn, examined by Mr. POPE, testifies as follows:

Q. What is your name?
A. William H. Condon.
Q. Will you please state where Sarah J. Condon resides, and of what State she was a citizen March 31, 1884?
A. She resides in the city of Chicago, and was a citizen of the State of Illinois at that time.
Q. She was then a citizen of this State and a defendant in this case?
A. Yes, sir.

WILLIAM H. CONDON.

Subscribed and sworn to before me—
JOHN I. BENNETT, *Master, &c.*

WM. H. BRADLEY, a witness called on behalf of complainant, being first duly sworn, examined in chief by Mr. POPE, testified as follows:

Q. Please state your name.
A. Wm. H. Bradley.
Q. Are you one of the defendants in this case?
A. I am.
Q. Please state the citizenship of the following named defendants in this case—Adolph Loeb, Lyman Baird, Wm. H. Bradley, and Louis H. Boutell—March 31st, 1884.
A. They were all of Chicago and citizens of the State of Illinois.
Q. Where do they reside?
A. With the exception of Mr. Boutell, they reside in Chicago. Mr. Boutell resides in Evanston, Cook county.

WM. H. BRADLEY.

Subscribed and sworn to before me—
JOHN I. BENNETT, *Master, &c.*

380 E. A. SAALFELD, a witness called on behalf of the complainant, examined by Mr. POPE, testified as follows:

Q. Please state your name and residence.
A. E. A. Saalfeld, Chicago.
Q. Of what State was Alfred Corning Clarke, the complainant, a citizen on March 31, 1884?
A. Of the State of New York.
Q. Of what State was James Bolton a citizen of on March 31, 1884, one of the defendants in this case?
A. Of the State of Illinois.
Q. During 1879 did you have any business connection with Edward Clark, the father of Alfred Corning Clark; if so, what?
A. I attended to his loan and real-estate matters in the State of Illinois.

Q. Will you please look at the tax receipt dated April 21, 1879, purporting to be a receipt for taxes in Gormley's Addition to Glencoe and Culver and Johnson's Addition to Glencoe, a copy of which is attached to the testimony taken in this case, and state whether you have ever seen the same before?

A. I have seen the original, which is handed to me.

Q. Did you ever pay the taxes mentioned in this receipt?

A. I did.

Q. Did you procure the tax receipt which is now handed you at the time you paid the taxes?

A. Yes, sir.

Q. This is the original receipt procured by you at the time you paid the taxes of 1878?

A. Yes, sir.

EDWARD A. SAALFELD.

Subscribed and sworn to before me—

JOHN I. BENNETT, *Master, &c.*

381 Complainant now offers again the tax receipt identified by the witness, a copy of which is already attached to the testimony taken in this case.

HORACE W. CROMWELL, a witness called on behalf of the complainant, examined by Mr. POPE, testified as follows:

Q. Please state your name and address.

A. Horace W. Cromwell, Englewood.

Q. Do you know Daniel J. Hubbard, one of the defendants in this case?

A. I do.

Q. Have you any business relations with him; if so, what?

A. I am his clerk.

Q. Of what State was he a citizen on March 31, 1884?

A. The State of Illinois.

Q. Is he still a citizen of that State, and where does he reside?

A. He is still a citizen of Illinois, and resides at Englewood, Cook county.

HORACE W. CROMWELL.

382 Copy.

COUNTY COLLECTOR'S OFFICE,
COOK COUNTY, STATE OF ILLINOIS,
CHICAGO, *April 21st*, 1879.

Received of Ed. Clark, 241 State St., seventy-one $\frac{72}{100}$ dollars in full of State, county, city, town, school, road, park, and corporation taxes for the year 1878 on the following-described property:

Notification of Special Assessments Returned to County Collector.

Description.	Sec.	T.	R.	Acres.	Lot.	Sub lot.	Block.	Valuation.	Total tax.
								Dolls.	*Dolls. Cents.*
							4	123	3 99
							3	111	3 60
							8 to 9	529	17 07
	7 to 18	42	13				10 to 24	1,305	42 35
						7	6		50
Gormley's Add. to Glencoe.						8	"		50
						9	"		50
						10	"		50
						13	"		50
						14	"		50
						15			50
						16	"		50
Costs									71
									71 72

Culver & Johnson's Add. to Glencoe.

(Signed) S. H. McCREA,
Co. Collector.

383 MONDAY, *September* 28, 1885—3 p. m.

Parties met pursuant to adjournment.

Present: Counsel as before.

Complainant offers in evidence the original tax receipt, dated April 21, 1879, taxes of 1878, and it is agreed that a copy of the same may be attached in lieu of said original provided said original is produced at the hearing of the case.

JOHN L. DAY, recalled on behalf of complainant, examined in chief by Mr. POPE, testified as follows, to wit:

Q. Will you please tell us of what State the following persons are citizens: John Nutt, James F. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, Granville D. Hall, John L. Day, Michael Gormley, Elisa Gormley, Morton Culver, and Eugenia M. Culver?

Question objected to because it is only material as to their citizenship at the time the bill was filed.

A. They are all citizens of the State of Illinois.

Q. Of what State were these persons mentioned in the last question citizens on March 31st, 1884?

A. Citizens of the State of Illinois.

Q. In some portions of your testimony and exhibits that have been introduced, attached to your testimony, the name of Mr. Sherwood, the trustee, is given as R. N.; is that correct or not?

384 A. It is incorrect.

Q. What is his real name?

A. Porter N. Sherwood is his real name.

Q. The name of James Dennis is given in one or more places of said testimony or in the exhibits attached to it as J. F. Dennis, in other places as J. S. Dennis. What is his real name?

A. James F. Dennis.

Q. Before signing your testimony will you please look at the records of the president and council of the village of Glencoe, portions of which have been introduced, and if the exhibits attached purporting to be copies of such records contain incorrect statements of those two names, will you please correct them?

A. Yes, sir.

Above question objected to by counsel for defendant.

Q. Will you please, also, if you should find that any portion of the records contain these names incorrectly taken down, specify in your testimony in what respect such records are incorrect?

A. Yes, sir.

Cross-examination by Mr. CULVER:

Q. What constitutes a citizen in Illinois?

385 A. As I understand it, a man must be a citizen of the United States, and must have been a resident of the State of Illinois for one year preceeding the time that — is said to be a citizen of the State of Illinois.

Q. How is it about a woman?

A. Their citizenship would follow If the question alludes to a woman who is the wife of a citizen of the State of Illinois, her citizenship would follow his.

Q. If a foreign-born woman marries an American citizen she thereby becomes an American citizen, does she?

A. Yes, sir; if I understand it.

Q. And if she lives in the State of Illinois as the wife of a citizen of the State of Illinois she is thereby a citizen of the State of Illinois, too?

A. As I understand it, sir.

Q. How do you know that the parties whom you have stated to be citizens of the State of Illinois were citizens of the State of Illinois at the time this bill was filed?

A. I know of my own personal knowledge that they have all been residents of the State of Illinois for one year preceeding that time, and I know from hearsay that they are all native-born citizens of the United States.

Q. Where was Eliza Gormley born?

386 A. I have understood that she was born in Cook county.

Q. Where was Eugenia M. Culver born?

A. In the United States; I have so understood; probably in Illinois.

Redirect examination by Mr. POPE:

Q. Mr. Culver has asked you in regard to the requirements of citizenship. Does residence in the county or precinct have anything to do with citizenship, as you understand it, in the State of Illinois?

A. Well, the citizenship of the State would embody the residence in some small portion of the State.

—. Mr. Culver, then if a man were a citizen of the United States and were to live in 12 different counties of Illinois in 12 successive

months, he would be a citizen of the State of Illinois, in your definition.

A. Yes, sir; he would.

Q. Then it is not necessary that he live in a county a certain number of months, nor in a certain precinct a certain number of days?

A. He must live somewhere in the State of Illinois, and if he lived in every county of the State it would not affect his State citizenship, but it would his right to vote.

387 Mr. POPE: How many of these persons that you have mentioned were residents at the date of filing of the bill of Cook county?

A. All of them.

Q. Of what counties were they residents?

A. Cook county.

Q. Do you know at that time whether they were living within the State of Illinois?

A. Yes, sir; they were.

Q. You don't know anything about Mr. Hall, positively?

A. Yes, sir; I know this: that it is one of the requirements of the trustee that he shall be a resident of the village of Glencoe for one year preceeding the time he becomes an officer.

Q. Had Mr. Hall resigned his position before the date of filing the bill?

A. No, sir.

Q. Had his resignation ever been accepted before the filing of the bill?

A. I don't know as it was ever accepted; I don't remember whether any action was taken or not; probably not.

By way of explanation I desire to state that I know all the men I was questioned about, as to their citizenship, were voters

388 in the village of Glencoe at the date of filing of the bill in this cause.

JOHN L. DAY.

Subscribed and sworn to before me—

JOHN I. BENNETT, *Master*.

389 MORTON CULVER, recalled on behalf of the complainant, examined in chief by Mr. POPE, testified as follows, to wit:

Q. Will you please tell us what State James N. Johnson and Eloisa Johnson were citizens at the date of filing this bill?

A. I do not know.

Q. Where did they reside at the time of filing of this bill?

A. I do not know that only from hearsay.

Q. What have you understood from hearsay?

A. In Lamont.

Q. How long have they been living there?

A. That I cannot say.

Q. Had they ever been residents of the State of Illinois?

A. Yes, sir; they had been.

Q. When?

A. About 11 years ago, I believe.

Q. Do you know whether James N. Johnson has ever voted in the State of Illinois?

A. I think not.

Q. Do you know whether he was a citizen of the State of Illinois?

A. I don't know that he ever was or that he was not.

Q. Was Eloisa Johnson his wife?

390 A. So I believe.

Q. How long did James N. Johnson reside in the State of Illinois prior to filing this bill?

A. I do not know.

Q. Can you tell about how long?

A. No; because I never became acquainted with Johnson until about '74.

Q. How long did you continue knowing him?

A. I have known him ever since I became acquainted with him, in 1874.

It is understood and agreed that the signatures of the defendants' witnesses are waived, except Michael Gormley's signature.

Adjourned to Thursday, October 1st, 1885, 3 p. m.

391 In the Supreme Court of Illinois, Northern Grand Division.

MICHAEL GORMLEY *vs.* JOHN L. DAY. } Errors to the Appellate Court, First District of Illinois.

The clerk will please issue a writ of error to the clerk of the first district of Illinois and a summons to the sheriff of Cook county commanding him to summons the defendant, John L. Day, to appear at the supreme court for the northern grand division at the next term thereof.

Nov. 12, 1884.

MORTON CULVER,
Att'y for Michael Gormley, Plaintiff in Error.

$10, clerk's fees, inclosed.

Endorsed: Filed Nov. 14, '84. "E. F. Dutton, cl'k."

392 STATE OF ILLINOIS, } ss:
Supreme Court, Northern Grand Division,

The People of the State of Illinois to the sheriff of Cook County, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which was in the appellate court of Illinois, first district, before the judges thereof, between Michael Gormley and John L. Day, it is said manifest error hath intervened, to the injury of the said Michael Gormley, as we are informed by his

complaint, the record and proceedings of which said judgment we have caused to be brought into our supreme court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same in due form and manner according to law, therefore we command you that by good and lawful men of your country you give notice to the said John L. Day that he be and appear before the justice of our said supreme court, at the next term of said court, to be holden at Ottawa, in said State, on the first Tuesday in
393 March, A. D. 1885, to hear the record and proceedings aforesaid and the errors assigned, if he shall see fit, and further to do and receive what said court shall order in this behalf; and have you then and there the names of those by whom you shall give the said John L. Day notice, together with this writ.

Witness John Scholfield, chief justice of our said court, and the seal thereof, at Ottawa, this 14th day of November, in the year of our Lord one thousand eight hundred and eighty-four.

[Supreme Court Seal.]

E. F. DUTTON,
Clerk of the Supreme Court.

Endorsed: Rec'd at — o'clock — m., Nov. 17, 1884. Seth M. Hatchett, sheriff. P'd, 75. Served this writ on the within-named John L. Day by reading this writ to him this 18th day of November, 1884. Seth M. Hanchett, sheriff, by J. H. Burk, deputy. *Scire facias.* Filed Dec. 5th, A. D. 1884. A. H. Taylor, clerk.

STATE OF ILLINOIS, }
Supreme Court, Northern Grand Division, } *ss:*

—, Alfred H. Taylor, clerk of the supreme court in and for the northern grand division of the State of Illinois, do hereby certify that the foregoing is a true copy of the precipe and *scire facias*, to-
394 gether — the endorsement thereon, in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said supreme court this 17th day of February, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] A. H. TAYLOR,
Clerk of the Supreme Court.

STATE OF ILLINOIS, *ss:*

I do hereby certify that the annexed and foregoing attestation by Alfred H. Taylor, clerk of the supreme court for the northern district of Illinois, is in due form and by the proper officers.

JOHN SCHOLFIELD,
Presiding Chief Justice of the Supreme Court of Illinois.

Feb'y 20, 1885.

395 MICHAEL GORMLEY, recalled on behalf of the defendants, examined in chief by Mr. CULVER testified as follows:

Q. Did you ever make a statement to Frank Smith that you pro-

posed to see if you could not get these streets and alleys, meaning the streets and alleys in Gormley's Addition to Glencoe, vacated, as they were yours, on or about the 21st day of March, 1874, or at any time?

A. No, sir; I never did, nor to any one since then.

Cross-examination by Mr. POPE:

Q. Did you have any conversation with Mr. Smith at that time?

A. Yes, sir.

Q. Did you talk to him about the purposes of this suit?

A. No, sir; I don't think I did; there was no talk.

Q. At that time did he talk to you about the vacation of these streets?

A. No, sir.

Q. Was there any conversation at that time in regard to what you intended to do in the future in regard to those streets?

A. No, sir; none whatever.

Q. Are you as positive about that as you are about anything else you have testified to?

A. Yes, sir; I have never spoken about it, nor never spoke those words to any living soul.

Q. What was the conversation you had with him at that time? Detail it in full as near as you can.

A. He came there and said he was agent for Mr. Clark and wanted to know if I would not take a lease from him, and I told him no; I would not take a lease from him. Then he wanted to have me come to the city and see if we could not arrange matters and fix up the matter between Mr. Clark and Mr. Culver and myself, and I told him I would come.

396 Q. Did you come?

A. No, sir; I did not. The suit was brought before I could reach it. I did intend to go.

Q. Did you see Mr. Morton Culver?

A. Yes, sir.

Q. Did he tell you to come?

A. He said he would come just as quick as he could. If he had come I should have come.

Q. What else was said at that time, if anything?

A. I do not remember anything more.

Q. Did you have some talk about that time about the vacation of the streets in Gormley's Addition to Glencoe?

A. Not that I know of.

Q. Was it not referred to in the slightest degree?

A. I do not think it was.

Q. Are you positive?

A. As near as I can remember. The most he talked about was the lease.

Q. Did you tell Mr. Smith you had some interest in the alleys or streets at that time?

A. I do not remember talking about anything of that kind.

Q. Will you swear that you did not tell him that you had an interest in the streets and alleys at that time?

A. I do not remember of ever telling him anything about it. I do not——

Q. You swear now simply from the fact that you do not recollect the conversation?

A. Well, I am sure I never said those words to any one.

Q. You swear now that you did not use the words which Smith states you did use because of the fact you do not recollect. Is that so?

A. I think I would be pretty apt to recollect.

Q. Answer the question yes or no.

397 A. I did not say those words to him. I would recollect if I used those words, but I am sure I never did.

Q. You swear now that you did not use the words which Smith states you did because of the fact you do not recollect. Is that so?

A. I say no. I would remember them if I had used them. I know I would never use those words to any one.

Q. Question repeated.

A. I do recollect. I do—I do——

Q. I thought you said a few minutes ago that you did not recollect?

A. I say I never used those words to him; never.

Q. Do you swear that you never used those words because you do not recollect?

A. I am sure I would recollect if I said so. I never used those words to anybody. I never used them to any living soul, neither Smith or anybody else.

SATURDAY, *October* 31, 1885—2 p. m.

Parties met pursuant to agreement.

Present: Counsel as before.

CHARLES E. POPE, a witness called on behalf of the defendants, being first duly sworn, examined by Mr. CULVER, testified as follows:

Q. Are you one of the complainant's solicitors in this case?

A. Yes.

Q. Have you brought with you all the abstracts of titles, original and copies, in your possession or under your control which ever belonged to the complainant or were ever delivered to the complainant or any of his agents in reference to a certain loan secured by a trust deed already offered in evidence by Michael Gormley and Morton Culver to Adolph Loeb, trustee, and purporting to show the title or part thereof to the lands and parts thereof described

398 in the trust deed?

A. I have brought all the abstracts that have ever been in the office of our firm or that I have ever had possession of relating to the property in controversy.

Q. Will you allow me to look at them?

A. No; only to enable you and the master, if he sees fit, to see whether they are competent evidence; for no other purpose. I desire to state to the master that the only abstracts that either I or my firm have or had are abstracts that were made subsequent to the fire

of '71, and are not evidence in this case or in any case. I will submit at any moment these abstracts to the master for the purpose of verifying my statements, but I do not propose to allow defendants' counsel to examine private memoranda which complainant has paid for and which none of the defendants have the slightest right to examine, except for the purpose of showing they are not competent evidence.

By the MASTER: The only question involved seems to be whether a litigant may bring in a witness by *subpœna duces tecum* and compel the production by a person other than the litigating party of an abstract of title, to which such party has no ownership, for the purpose of allowing the same to be used as evidence, and especially where, as in this case, the witness states and the fact is that he has no other abstract and controls none made subsequent to the fire in Chicago in 1871, when the original records were burned.

The statute only authorized the use in evidence of abstracts made before the fire in the due course of business, and I do not understand that the abstract in question is admissible in this case under that statute and the decisions of the supreme court thereon.

399 I therefore hold that the witness is not compelled to produce and deliver to the defendants the abstract in question, (1) because it is the property of Clark and not that of the defendants, and (2) because it is inadmissible as evidence.

To which ruling of the master defendants' counsel excepted.

I, John I. Bennett, master in chancery of the circuit court of the U. S. for the northern district of Illinois, do hereby certify that the above and foregoing is a correct transcript of the evidence of Charles E. Pope as a witness before me in the case of Alfred Corning Clarke, complainant, *vs.* The Village of Glencoe *et al.*, defendants, and of my ruling therein upon the motion of the defendants.

I further certify that I believe the above and foregoing ruling to be correct.

Chicago, November 2, 1885.

JOHN I. BENNETT,
Master in Chancery of the United States Circuit Court for the Northern District of Illinois.

Subsequent to the making but before the filing of my report of the foregoing evidence on the 27th of October and on Oct. 31st, 1885, the parties again appeared before me, and the above evidence of Michael Gormley and Charles E. Pope, contained on page 338 and subsequent pages, and the above ruling was [were] made by me, and on the same day exceptions thereto were made of his Hon. Judge Blodgett, who overruled the exceptions.

JOHN I. BENNETT, *Master, &c.*

A. I do not remember of ever telling him anything about it. I do not——

Q. You swear now simply from the fact that you do not recollect the conversation?

A. Well, I am sure I never said those words to any one.

Q. You swear now that you did not use the words which Smith states you did use because of the fact you do not recollect. Is that so?

A. I think I would be pretty apt to recollect.

Q. Answer the question yes or no.

397 A. I did not say those words to him. I would recollect if I used those words, but I am sure I never did.

Q. You swear now that you did not use the words which Smith states you did because of the fact you do not recollect. Is that so?

A. I say no. I would remember them if I had used them. I know I would never use those words to any one.

Q. Question repeated.

A. I do recollect. I do—I do——

Q. I thought you said a few minutes ago that you did not recollect?

A. I say I never used those words to him; never.

Q. Do you swear that you never used those words because you do not recollect?

A. I am sure I would recollect if I said so. I never used those words to anybody. I never used them to any living soul, neither Smith or anybody else.

SATURDAY, *October* 31, 1885—2 p. m.

Parties met pursuant to agreement.

Present: Counsel as before.

CHARLES E. POPE, a witness called on behalf of the defendants, being first duly sworn, examined by Mr. CULVER, testified as follows:

Q. Are you one of the complainant's solicitors in this case?

A. Yes.

Q. Have you brought with you all the abstracts of titles, original and copies, in your possession or under your control which ever belonged to the complainant or were ever delivered to the complainant or any of his agents in reference to a certain loan secured by a trust deed already offered in evidence by Michael Gormley and Morton Culver to Adolph Loeb, trustee, and purporting to show the title or part thereof to the lands and parts thereof described

398 in the trust deed?

A. I have brought all the abstracts that have ever been in the office of our firm or that I have ever had possession of relating to the property in controversy.

Q. Will you allow me to look at them?

A. No; only to enable you and the master, if he sees fit, to see whether they are competent evidence; for no other purpose. I desire to state to the master that the only abstracts that either I or my firm have or had are abstracts that were made subsequent to the fire

of '71, and are not evidence in this case or in any case. I will submit at any moment these abstracts to the master for the purpose of verifying my statements, but I do not propose to allow defendants' counsel to examine private memoranda which complainant has paid for and which none of the defendants have the slightest right to examine, except for the purpose of showing they are not competent evidence.

By the MASTER: The only question involved seems to be whether a litigant may bring in a witness by *subpœna duces tecum* and compel the production by a person other than the litigating party of an abstract of title, to which such party has no ownership, for the purpose of allowing the same to be used as evidence, and especially where, as in this case, the witness states and the fact is that he has no other abstract and controls none made subsequent to the fire in Chicago in 1871, when the original records were burned.

The statute only authorized the use in evidence of abstracts made before the fire in the due course of business. and I do not understand that the abstract in question is admissible in this case under that statute and the decisions of the supreme court thereon.

399 I therefore hold that the witness is not compelled to produce and deliver to the defendants the abstract in question, (1) because it is the property of Clark and not that of the defendants, and (2) because it is inadmissible as evidence.

To which ruling of the master defendants' counsel excepted.

I, John I. Bennett, master in chancery of the circuit court of the U. S. for the northern district of Illinois, do hereby certify that the above and foregoing is a correct transcript of the evidence of Charles E. Pope as a witness before me in the case of Alfred Corning Clarke, complainant, *vs.* The Village of Glencoe *et al.*, defendants, and of my ruling therein upon the motion of the defendants.

I further certify that I believe the above and foregoing ruling to be correct.

Chicago, November 2, 1885.

JOHN I. BENNETT,
Master in Chancery of the United States Circuit Court for the Northern District of Illinois.

Subsequent to the making but before the filing of my report of the foregoing evidence on the 27th of October and on Oct. 31st, 1885, the parties again appeared before me, and the above evidence of Michael Gormley and Charles E. Pope, contained on page 338 and subsequent pages, and the above ruling was [were] made by me, and on the same day exceptions thereto were made of his Hon. Judge Blodgett, who overruled the exceptions.

JOHN I. BENNETT, *Master, &c.*

400 CLARK
vs.
GORMLEY *et al.*

It is stipulated and agreed that defendants Gormley have to October 23rd, 1884, to close their proofs, and said cause may be placed on the calendar of causes for trial at this term.

MORTON CULVER,
Sol'r for Gormleys.
McCOY, POPE AND McCOY,
Sol'rs for Complainant.

(Endorsed:) Filed Nov. 7, 1885. Wm. H. Bradley, clerk.

401 In the Circuit Court of the United States, Northern District of Illinois.

CLARK
vs.
VILLAGE OF GLENCOE *et al.*

Be it remembered that on the trial of the above-entitled cause, in open court, before the Hon. Walter Q. Gresham, the defendants, Michael and Eliza Gormley, in order further to maintain the issues in their behalf, offered in evidence the following certified copy of an ordinance of The Village of Glencoe, one of the above-named defendants:

402 "An ordinance relating to special assessments.

Be it ordained by the council of the village of Glencoe:

SECTION 1. That article nine (9) of an act of the General Assembly of the State of Illinois entitled 'An act to provide for the incorporation of cities and villages,' approved the tenth day of April, A. D. 1872, be, and the same is hereby, adopted in accordance with section 54 of said article, together with all subsequent amendments thereto by said General Assembly."

STATE OF ILLINOIS,
County of Cook, Village of Glencoe, } *ss:*

I hereby certify that the foregoing is a true copy of an ordinance passed by the council of the village of Glencoe the 15th day of September, A. D. 1873, and posted the 18th day of September, A. D. 1873, as the same appears on the book of ordinances of said village of Glencoe, in my office.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said The Village of Glencoe this ninth day of November, A. D. 1885.

[Village of Glencoe, Cook county, Ill., incorporated March 29, 1869.]

JOHN L. DAY,
Village Clerk.

403 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Alfred Corning Clark is the complainant and The Village of Glencoe; John Nutt, James S. Dennis, Augustus H. Hovey, Frank M. Van Etten, George G. Ligare, Granville D. Hall, all members of the council of said Village of Glencoe; John L. Day, clerk of said village; Michael Gormley, Eliza Gormley, Morton Culver, Eugenia M. Culver, James N. Johnson and Eloisa Johnson, Daniel J. Hubbard; Adolph Loeb, trustee; James Bolton, successor in trust; Sarah J. Condon; Lyman Baird, trustee; William H. Bradley and Lewis H. Boutell, successors in trust, and "all whom it may concern" are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fifth day of October, 1886.

WM. H. BRADLEY, *Clerk.*

$183.95 paid for this transcript by Michael Gormley.

WM. H. B., *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 192. Michael Gormley, appellant, *vs.* Alfred Corning Clark. Filed October 16, 1886.

Office Supreme Court U. S.
FILED.
NOV 14 1889
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1889.

NO. 192.

MICHAEL GORMLEY,
Appellant.

vs.

ALFRED CORNING CLARK,
Appellee.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

Brief and Argument for Appellant.

MILLARD F. RIGGLE,
Attorney for Appellant.

W. S. ELLIS & SON, LEGAL PRINTERS, 164 AND 166 WASHINGTON ST.

IN THE

Supreme Court of the United States,

OCTOBER TERM A. D. 1889.

MICHAEL GORMLEY,
Appellant.

vs.

ALFRED CORNING CLARK,
Appellee.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT.

On the 10th day of March, 1843, Marcus Gormley received a patent from the United States for the southwest quarter of section seven (7), township forty-two (42) north, range thirteen (13), east of the third principal meridian (r. p. 185), and by warranty deed, dated May 4th, 1861, and recorded in the Recorder's Office of Cook County, Illinois, in book 214 of deeds, page 340, the said Marcus Gormley and wife conveyed said property to Michael Gormley, the appellant, (r. p. 99). On the

5th day of March, 1874, the said appellant made a subdivision of said property, subdividing it into lots and blocks, (page 100), and on the 17th day of May, 1877, the said Michael Gormley and wife conveyed the lots and blocks in question in said subdivision to Adolph Loeb in trust, to secure an indebtedness due various parties; said deed being recorded May 18th, 1877, in Cook County, book page 232, (record 107). September 10th, 1877 said Loeb conveyed a part of said premises, under the powers given in said trust deed to Edward Clark (page 112), and the remaining portion of said lots and blocks to Sarah J. Condon, and said Sarah J. Condon afterward conveyed her interests to the said Edward Clark, the father of appellee (page 115), on the 29th day of March, 1884.

October 4th, 1881, the village council of Glencoe, passed an ordinance, vacating Adams avenue in said subdivision, between Grove and Bluff Streets; said ordinance being recorded according to law in the Recorder's office of Cook County, October 17th, 1881, (page 101). On the said vacated street has been the home of said Michael Gormley, since the fall of 1852 (page 204, and map. p. 180), which he still occupies as his homestead. On the 3rd day of January, 1882, the necessary number being present, the village council of Glencoe unanimously passed an ordinance, vacating, (1) Washington avenue, between Grove and Bluff and between Valley and Prairie streets; (2) Adams street; (3) Jefferson avenue; (4) Madison avenue; (5) Monroe avenue; (6) Jackson avenue; (7) Bluff street, between Adams and Jackson avenues; (8) Valley street, between Adams and Jackson avenues; (9) Wood street, between South and Jackson avenues; (10) Prairie street, between South and Jackson avenues, (p. 104). Said

ordinance was regularly posted by Michael Gormley, the sidewalk inspector of said village (p. 104) and recorded according to law in the Recorder's office of Cook County in book 1166 of Records, page 31, (p. 105). After the fee in said streets had reverted to the appellant the village council on the 11th day of February, 1882, attempted to condemn the said streets by the following extraordinary proceeding.

"Be it ordained by the council of the village of "Glencoe, that any and all ordinances, heretofore passed "by this council vacating any streets or parts of streets, "shown in the first and original recorded plat of said "addition are hereby declared to be public streets."

Recorded February 13th, 1882, in book 1155 of records, page 396. (R. 105.)

The village of Glencoe existing under a special charter has its municipal government vested in a council, consisting of a president and five councilmen (p. 53, section 1, article 11) a majority of whom shall constitute a quorum to do business. (Section 5.) The council have power under said charter, "to lay out, open, alter, "widen, extend, establish, vacate, abolish, grade or pave "or otherwise improve and keep in repair all roads, streets, "lanes, avenues, alleys, squares, commons, parks or other "public grounds, or places in said village and to have ex- "clusive control of the same." (P. 58, section 6, article 4.)

The appellee on the 31st day of March, 1884, filed in the Circuit Court of the Northern District of Illinois, his bill of complaint or petition against the appellant and others, alleging that he, the said Alfred Corning Clark, being a citizen of the state of New York, did on or about the 14th day of October 1882, become and has been continuously ever since, and now is the owner in fee simple

absolute, free and clear of all other liens, claims and encumbrances, of certain blocks and lots in said subdivision described, and that the petitioner derived title by descent through his father, Edward Clark, who died October 14th, 1882. Then follows the chain of title hereinbefore set out.

Petitioner then alleges that the public records relating to said property were destroyed by the great Chicago fire, October 8th and 9th, 1871; that appellant, to cloud the title and diminish the value of said property, did on or about October 4th, 1881, procure to be passed by the village council of Glencoe, an ordinance, vacating Adams avenue, between Grove and Bluff streets, between blocks 8 and 10; said ordinance being duly posted and a duly certified copy thereof recorded in the Recorder's office of Cook County, Illinois, October 17th 1881; that appellant did on or about the 3rd day of January, 1882, procure by the said village council, under the representation that he was the only party interested who could be affected by said ordinance, a passage of an ordinance whereby it was sought to vacate other streets in said subdivision; said streets completely surrounding the land of the petitioner and that on January 12, 1882, at a special meeting of said council, having ascertained that said representations of appellant were false, the said council reconsidered the passing of said ordinance and annulled the same, and again to cover any irregularity, on the 24th day of January, 1882, reconsidered and annulled said ordinance, passed January 3, 1882. That on the 7th day of February, 1882, said council passed another ordinance, wherein it was enacted that all prior ordinances passed by said council, vacating or purporting to vacate streets or parts of streets in Gormley's addition to Glencoe, were re-

pealed, and all streets and parts of streets shown on the plat thereof, were declared to be public streets; said ordinance being posted and recorded. Petitioner further avers, that John L. Day never posted said ordinance of January 3, 1882, but that Michael Gormley did on or about January 24th, 1882, demand a certified copy of said ordinance, which said Day refused to give, unless he included therein a copy of the proceedings of said council rescinding said ordinance of January 3rd, 1882, and that thereupon said appellee copied said ordinance passed January 3rd, 1882, and recorded the same in the recorder's office of Cook county, together with an affidavit attached by said Michael Gormley, that the same was a true copy and that it had been posted in three of the most public places of Glencoe on January 24th, 1882. That said appellant filed a petition in the Superior Court of Cook county for a madamus to compel said Day to furnish said appellant with a certified copy of said ordinance of January 3rd, 1882; that said Day filed an answer to said petition, that said cause came up for hearing, and said court found the issues for Day and denied the writ; that said appellant appealed from said judgment to the Appellate Court of said district, and that said Appellate Court affirmed the decision of said Superior Court.

Petitioner further avers that said appellant threatens to procure the present council of said village to pass other and similar ordinances to those of October, 1881, and January, 1882, and to procure certified copies of said ordinances so to be passed, and file them for record for the purpose of clouding title of petitioner.

Petitioner further avers that said Michael Gormley has fenced in said blocks and lots owned by petitioner, and

said streets and parts thereof, so sought to be vacated, is in possession of and claims to have rights in the same, and purposes and threatens to keep possession thereof.

Petitioner further avers that said council had no right to pass such ordinance of October, 1881, and January, 1882, and that Day had no right to furnish certified copies thereof, and that neither said council or their successors in office had any right to have any such or similar ordinance, so sought to be procured to be passed by said appellant as aforesaid, passed, and that said Day has no right to furnish copies thereof.

That said ordinances of vacation heretofore mentioned are void, and a cloud upon the title of petitioner.

Petitioner fears that said Gormley, by himself or agent, will procure the village council to pass other ordinances to vacate said streets, and that it is the common report and rumor in said village, that said Gormley and friends are striving to procure the election of members to the council, at the election to be held on 1st Tuesday of April next, who will pass and enact such vacating ordinance or ordinances.

He prays that said ordinances of January, 3rd, 1882 and October 4th, 1881, and the copies thereof recorded as aforesaid be declared null and void; and that at the final hearing of said cause a decree may be entered, confirming and establishing in the petitioner in fee simple absolute, the title to said lots and blocks; that in such decree the United States Marshal for said district be ordered to remove said Gormley from the possession of said lots and blocks, and place the petitioner in possession of the same; that the village council of Glencoe be restrained from enacting or passing any ordinance vacating any streets or parts of streets adjoining any of said lots or

blocks, without consent of petitioner, and that Michael Gormley be restrained from applying to said council for the passage of such ordinance or ordinances.

On the fifteenth day of September, 1884, Michael Gormley and Eliza Gormley filed their joint and several plea and answers in said cause, saving and reserving unto themselves, and to each of them all benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and other imperfections in said bill contained.

They deny that complainant is the owner of said property.

They admit that Michael Gormley petitioned the village council to vacate Adams street, from Grove to Bluff streets, and that said petition was in writing. That said ordinance was duly passed by the requisite number of voters published as required by law, and a true copy thereof recorded in said Recorder's office, as required by law; and that said Michael Gormley thereupon became invested with the title to said portion of said supposed Adams street.

Further answering the defendants, Michael and Eliza Gormley, say that they occupy said strip of ground marked Adams street, together with other property adjacent; that said strip is now and for the last forty years, has been used and occupied by said Michael Gormley and his family continuously, and to the exclusion of all other persons as a homestead; that his house in which he now resides with his family, and in which he has resided for the last forty years, is situated on said supposed Adams street, and he has never in any way, released or relinquished his homestead rights thereto, and he and his said wife Eliza Gormley claim the same, as it in fact is as their home-

stead, as well as the land adjacent and adjoining in said portions of sections 7 and 18.

That the land occupied by said supposed Adams street was never and is not at present used as a public or even a private highway, that it has not been graded or turnpiked or set off or improved as a road, nor ever been used by the public in any manner whatsoever, but has always with other lands adjacent, been enclosed by a fence and fences for the last forty years, and for the last twenty-five years been enjoyed and controlled by the said Michael Gormley and his family exclusively.

That if complainant is injured by the passage of said ordinance, he has no remedy in equity, but if any remedy he has it is at law, and that this court has no jurisdiction on the equity side thereof, of the subject matter.

They deny that the passing and recording the said vacating ordinances have in any way clouded the title to the several lots and blocks in question, claimed to be owned by the complainant, or to any of them.

They admit that Michael Gormley presented a petition to said Council for the passage of an ordinance to vacatethe supposed street mentioned in exhibit "D" but deny that he made any false or fraudulent representations in relation thereto.

Defendants say the ordinances vacating said streets were regularly passed by the requisite majority of said Council at a regular meeting thereof; whereupon the title in fee to the land occupied by said supposed streets reverted instanter to the defendant Michael Gormley, and that any attempt to annul or rescind the same at any special or regular meeting of said Council thereafter, either on January 12th or 24th, or February

7th, 1882, was wholly null and void, as was also the attempt of said Council afterwards to re-establish said streets or supposed streets.

Defendants say it may be true that said Day never posted said ordinances of January 3rd, 1882, but say that Michael Gormley posted true copies thereof as required by the charter of Glencoe, and had a true copy of said order of vacation recorded in the Recorder's office of Cook County, as required by the statutes of Illinois in such case made and provided, and defendants insist that such proceedings have in no wise clouded or impaired the complainant's title, such as he has, to the lands or any part thereof, mentioned in complainant's bill of complaint; that the mandamus suit mentioned in complainant's bill of complaint can in no wise have any effect on this case.

Defendants deny that Michael Gormley has fenced in said lots and blocks claimed to be owned by complainant, and said streets and parts thereof, as alleged in complainant's bill of complaint, but say that the entire southwest quarter of Section 7, T. 42, R. 13 east of the 3rd P. M. has been used and occupied and enjoyed since the issuance of a patent, first by Marcus Gormley as a residence and homestead, and then the defendant Michael Gormley, and that the entire 160 acres have been enclosed by a fence or fences for the last forty years, except the north 33 feet thereof, which is a part of an old country road used by the public over thirty years, and the east 33 feet of said 160 acres, which is a public street.

Defendants submit to this Honorable Court that all and every the matters in the complainant's bill of complaint mentioned and complained of are matters which

may be determined and tried at law and with respect to which the complainant is not entitled to any relief from a court of equity; and these defendants ask that they shall have the same benefit of this defense as if they had demurred to the complainant's bill.

Complainant ought not to maintain his bill of complaint in this court because he nowhere alleges that the value of the property in controversy is so much as $500 and therefore this court has no jurisdiction of the subject matter.

Deny all manner of unlawful combination and confederacy; deny that complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and pray the same advantage of this answer as if they had further pleaded and demurred to the said bill of complaint, etc.

Verified by affidavit of Michael Gormley.

On the 9th day of December, 1885, a decree was entered:

Finding 1st, that the material allegations in said petition are true, that at the time of the filing of the petition, said petitioner was and now is the sole and only owner of the premises described with buildings, tenants, etc., and that Michael and Eliza Gormley are now and were, at the date of filing the petition, in possession of said lots and blocks and that the value thereof exceeds the sum of $500.00.

2nd. That petitioner derived and held title and now derives and holds title to said lots and blocks under and by virtue of an unbroken and complete chain of conveyances duly made, executed, acknowledged and delivered from the United States of America, to him, the said petitioner, and the plat entitled Gormley's Addition to

Glencoe, showing lots and blocks with other property, both conveyance and plat being recorded in Recorder's office of Cook County, and by descent from his father, Edward Clark, deceased, as the sole heir at law of the said Edward Clark.

3rd. That the public records of Cook County, Ill., showing the title to said lots hereinbefore mentioned, were utterly destroyed by fire on the 8th and 9th days of October, 1871.

4th. That at the date of filing the petition herein, on that portion of Adams avenue shown on said plat, as between Bluff and Grove streets, there was and is now located and situated the dwelling house, barn and shop belonging to said Michael Gormley.

5th. That the ordinance of January 3rd, 1882, mentioned in said petiton, whereby it was sought to vacate certain streets in said Gormley's Addition to Glencoe, and a copy of the same is recorded in the Recorder's office of Cook County, Illinois, but that said ordinance was never posted or published as required by the charter and ordinance of said village; but said ordinance of January 3rd, 1882, was by said council, by resolutions on January 12th and 24th, 1882, duly repealed, rescinded and annulled.

6th. That the council of said village of Glencoe, on October 4th, 1881, passed an ordinance to vacate so much of Adams avenue, as is located between Grove street and Bluff street, shown on said plat of Gormley's Addition to Glencoe, which said ordinance was duly posted as required by the charter and ordinance of said village of Glencoe.

Thereupon the court decrees: 1st. That the title to said lots and blocks (describing them) was at the date

of filing the petition herein, and now is vested in the petitioner in fee simple absolute with all rights, privileges, easements, tenements, hereditaments and appurtenances, and the said fee simple title, etc., confirmed and established in the petitioner.

2nd. That at the date of filing said petition said Gormley was and now is estopped as against petitioner from claiming any informality or defect in the plat of said Gormley's Addition to Glencoe, and that said Michael and Eliza Gormley have no homestead rights in any of said lots or blocks herein described, or in any streets or parts thereof upon which any of the lots or blocks abut, as against petitioner, his legal representatives, heirs and assigns of said lots or blocks.

5th. That said ordinance of January 3rd, 1882, was never legally posted, and was duly and regularly annulled and rescinded, and was at the date of filing the petition, and now is, null and void.

6th. That at the date of filing the petition the title was and now is to so much of Adams avenue, as is shown on the plat of said Gormley's Addition to Glencoe, between Grove street and Bluff street vested in fee simple in Michael Gormley, subject to the easement in, and the right of use of as a street by said petitioner, his heirs, etc., as the owner of lots or parts thereof abutting on said portion of said Adams avenue, between Grove and Bluff streets, and the court doth order, adjudge and decree that said Michael Gormley and Eliza Gormley remove from said portion of said Adams avenue between Grove and Bluff streets, said dwelling, barn and shop, now on last named portion of Adams avenue, on or before the first day of May, 1886, and that in default of such removal, so hereby ordered, upon proof by affidavit of a

demand by said petition for such removal, upon Michael and Eliza Gormley, and service of a certified copy of such decree by exhibiting and reading the same to them, and on a refusal by the said Michael and Eliza Gormley or either of them to obey such order of removal, the marshal of this district be and is hereby instructed to so remove said dwelling house, barn and shop from said portion of Adams avenue as hereby ordered and directed.

7th. That the petitioner has the right to immediate possession of said lots and blocks, the title of which is hereby decreed to be in him, said petitioner, and that said Michael and Eliza Gormley are hereby ordered, decreed and directed to surrender up possession to petitioner, of said lots and blocks, the title of which is hereby decreed in said Clark, and the court doth further order, adjudge and decree that such delivery of said lots and blocks be so made upon proof by affidavit of a demand made by petitioner on said Gormley for such possession of said lots and blocks, and service of a certified copy of this decree upon said Gormleys, by exhibiting and reading the same to them to obey such decree or order for possession of said lots and blocks; that a writ of assistance, directed to the marshal of this district, forthwith issued to place said Clark in possession of said lots and blocks.

ASSIGNMENT OF ERROR.

1. The court erred in not dismissing the bill for want of equity.

2. The petitioner had a complete and adequate remedy at law, and a court of chancery had no jurisdiction.

3. The court erred in decreeing void the ordinance

vacating said streets in said Gormley's addition to Glencoe.

4. The court erred in decreeing that said Michael and Eliza Gormley remove their house, barn and shop from said portion of Adams avenue, between Grove and Bluff street.

5. The court erred in decreeing in the petitioner an easement in the right of use of as a street by said petitioner, Adams avenue, between Grove and Bluff streets.

6. The court erred in decreeing the petitioner entitled to the possession of said lots and blocks in said petition described.

7. The court erred in decreeing the appellant to surrender up possession of said streets, lots and blocks to the petitioner.

ARGUMENT.

The Burnt Record Act was passed for the purpose of establishing and confirming titles to property—the title of which had become insecure by the great Chicago fire. It was not intended to take the place of ejectment proceedings, and deprive a man of his right of trial by jury, except in cases where the remedy at law was inadequate, or when the prime purpose of the petition was to establish the title to real estate rendered thus insecure.

When the prime purpose of the petition is to evict a man from premises he is in the adverse occupancy of, a court of chancery will, by right, refuse its aid when the remedy is adequate in a court of law.

The trust deed from Gormley, it's foreclosure, and the subdivision and ordinance complained of, are all acts which have occurred since the fire, and so far as the rights of the petitioner were concerned he could have obtained

them without any evidence relating back before the fire. Petitioner's and defendant's rights start with one common source, to-wit: The trust deed of Gormley to Loeb, beyond which it was unnecessary for petitioner to go in an ejectment proceeding. The evident intent of this petition was to deprive the appellant of his right to trial by jury, and a new trial under the statute in case of his defeat. If such a practice can be maintained under any system of reasoning, it practically ends suits at law, for possession of real estate in Cook county, Illinois, for the reason that every suit can be brought under disguise of Burnt record. Such was not the intent of the legislature in passing the act.

The right to possession was purely a question for a jury, and in all cases where there is a question purely legal, a court of chancery should refuse jurisdiction.

"Where a discovery is used as a mere pretense to "give jurisdiction it would be a gross abuse to entertain "a suit in equity where the whole foundation on which "it rests, is either disproved or it is shown to be a color-"able disguise, for the purpose of changing the form of "litigation."

Story, Equity Jur., 77.

The court in the case of *Lewis* v. *Cooks*, 23 Wallace, 466, held that a bill to set aside a judicial sale, alleging the nullity of the judgment, under which the premises were sold, by reason of non-service of the original process upon the defendant, cannot be sustained, because of the adequate remedy at law, and that "ejectment is an adequate remedy at law."

In this same case the court further declares that if such objection exists, although not made by demurrer, pleas or answer, nor suggested by counsel, it is the duty

of the court *sua sponte* to recognize it and give it effect.

"Whenever a court of law affords a plain, adequate "and complete remedy, without the aid of a court "of equity, the plaintiff must proceed at law be- "cause the defendant has a constitutional right to trial "by jury."

Killian vs. *Ebbinghaus*, 110 U. S., 568.

And this is a right that cannot be denied or abridged under legislative enactment.

In the last case cited, this court holds "that a party "claiming the legal title cannot use a bill in equity "in the nature of interpleader, as an action of ejectment." Neither can he use a petition in equity in the nature of "burnt records" as an action of ejectment.

Complainant can turn the defendant out of possession only upon the strength of his legal title, which he must first acquire, and having done this, a court of law is the proper form in which to bring his action.

Fussel vs. *Gregg*, 113 U. S., 550.

The Supreme Court of Illinois has decided that under the Burnt Record Act, a complainant out of possession may file a petition against a defendant in possession; but these cases can be regarded in no other light than in special instances when the remedy at law is inadequate.

This doctrine is in conflict with the entire principle of equity practice, for under the general principles of chancery jurisdiction to remove a cloud or to confirm or establish titles a complainant out of, could not file a petition against a defendant in possession; and if the act in question can be sustained only on the ground that it applies to all cases, regardless of the question, "Is there an adequate remedy at law?" then the act is unconstitutional because it would deprive the defendant of his right to

trial by jury. The constitutionality of the act can be sustained on the principle that it is only intended to supply a loss when courts of law have not the remedy to grant the relief sought.

This court has clearly defined the position I take in the case of *Holland* vs. *Challen*, 110 U. S., 15. Quoting from the court: "It does not follow that by allowing in "the federal courts a suit for relief under the statute of "Nebraska, controversies properly cognizable in a court of "law will be drawn into a court of equity. There can be "no controversy at law respecting the title or right of pos- "session to property, when neither of the parties are in "possession. An action at law, whether in the ancient "form of ejectment or in the form now commonly used, will "lie only against a party in possession; should such be "brought in the Federal Court under the Nebraska statute "against a party in possession, there would be force in the "objection that a legal controversy was withdrawn from "a court of law."

The obstruction complained of existed when the appellant mortgaged the premises, and at the time when appellee acquired his interest. No homestead rights were ever waived to the property on which Michael Gormley resides, and no proceedings have ever been taken under our statute to extinguish said homestead.

R. S. Illinois, Chapt. 52, Sec. 4, provides: "No release, waiver or conveyance, of the estate so exempted shall be valid unless the same is in writing subscribed by said householder and his or her wife or husband, if she or he have one, and acknowledged in the same manner as conveyances of real estate are required to be acknowledged or possession is abandoned or given pursuant to the

conveyance. * * Release in acknowledgment but not in body of the deed is not enough."

Hutchins vs. *Higgins*, 59 Ills., 29.

Sec. 1 of said act provides that every householder having a family, shall be entitled to an estate of homestead to the extent in value of $1000 in the farm or lot of land and building thereon owned or rightly possessed by lease or otherwise, and occupied by him or her as a residence, and such homestead and all right or title therein shall be exempted from attachment, judgment, levy or execution sale for the payment of debts or other purposes, and from the laws of conveyance, descent and devise except as provided.

There was no relinquishment or waiver of the homestead of said Michael Gormley, it being that part of Adams avenue between Grove and Bluff streets, upon which this house and barn stand, and where he has resided for over forty years, and the court clearly erred when it decreed said Gormley to surrender up possession and remove his buildings therefrom, or be evicted by the United States Marshal. The homestead unless expressly waived, would be paramount to any easement that appellee could have ever acquired. The Circuit Court expressly decrees the legal title to said slip of ground in Michael Gormley. Under what process of reasoning, can it decree away the homestead which he has never relinquished or abandoned?

The petitioner out of possession and the appellant in possession, it cannot be said that appellant obstructed the street. To have acquired an easement it was necessary for appellant to be in possession of the property, to which, and from which, he claimed the right of easement of the appellant's premises.

There was an attempt made by the Illinois legislature, R. S. Illinois, Chapt. 145, Sec. 2, to invest the adjoining lot owners with the fee of vacated streets, but the Supreme Court of Illinois, in *Helm* vs. *Webster*, 85 Illinois 116, declares said act unconstitutional. The court there holds that "an intention to take the property of one and "transfer it to another without compensation, ought not "to be attributed to the legislature, and a law that would "have that effect would be in violation of the constitu-"tion, as well as unjust. The limits of a lot must be the "extent of the ownership, and it cannot go beyond those "lines." Citing:

Gebhard vs. *Reeves*, 75 Ill., 301;

St. John vs. *Quitzow*, 72 Ill., 334,

and many other cases all to the same effect, and holding that in case of the vacation of a street, the fee does not go to the abutting lot owner, but to the owner of the fee at the time of the dedication. Reasoning in the light of these decisions, it cannot be held that after the village council had vacated the streets in question, they could divest the appellant in any other way than that of condemnation.

The Supreme Court of Michigan, *Cooper* vs. *Detroit*, 42 Mich., 584, holds that where a highway has been extinguished, it can only be renewed by the same methods of dedication which would turn other lands into public ways.

After the village of Glencoe passed the ordinance vacating the streets, the fee reverted immediately to the appellant, and it mattered not who posted the ordinance, or who filed the copy thereof for record. There is no pretext on the part of appellee as to any defect in the ordinance vacating Adams avenue, but as to the other

streets he insists that it was not legal. Gormley was street commissioner when the clerk of the village refused to post the ordinances or file a certified copy for record. Gormley, as street commissioner, posted the ordinance and affixed an affidavit to a true copy, sworn by him to be a true copy, and by him filed for record, according to the Illinois Revised Statutes in such case made and provided, the act of posting and recording being merely for the purposes of giving notice to subsequent purchasers, and not necessary to the validity of the ordinance.

All of these acts being purely of a legal character, equity will not interfere. For an injury which an individual or a corporation suffers in common with the public, equity will not relieve.

Detroit v. *R. R.*, 28 Mich., 173.

Durer v. *R. R.*, 2 Col., 673.

The acts of the village council of Glencoe, in vacating certain streets in Gormley's addition are either legal or illegal. If legal, no court has the power to set them aside, as it would be interfering with the legislative powers of a village in which, while acting within the scope of its authority, it is supreme—as free from judicial interference as if it were the legislature of a state or nation. If its acts are void there is no necessity for a court of chancery to declare them so, as in a proceeding at law the appellant could not avail himself of a void act.

Lewis v. *Cook*, *supra*.

The decree goes further than the petition or bill will warrant. There is no prayer or allegation contained in the bill warranting the court to decree the appellant to surrender the possession of the strip of land occupied by him as a homestead. The bill or petition seeks the possession of certain lots and blocks, and not the inter-

vening space between any such lots or blocks, and I submit to this Honorable Court, without further argument, that under the prayer for general relief, a court cannot legally decree one party to surrender to another the possession of land not specifically asked in the bill.

For the reasons hereinbefore stated, I respectfully submit the decree of the Circuit Court should be reversed.

MILLARD F. RIGGLE,
Attorney for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1889.

MICHAEL GORMLEY,
Appellant,

vs.

ALFRED CORNING CLARK,
Appellee.

Appeal from Circuit Court of the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLEE.

CHARLES E. POPE,
SOLICITOR FOR APPELLEE.

ALEXANDER McCOY,
CHARLES B. McCOY,
OF COUNSEL.

BARNARD & GUNTHORP, LAW PRINTERS, CHICAGO.

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OCTOBER TERM, A. D. 1889.

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Appeal from Circuit Court for the Northern District of Illinois.

STATEMENT OF FACTS.

MAY IT PLEASE YOUR HONORS:

The "statement of facts" by appellee is so incomplete and misleading from our stand-point that we must ask the court to bear with us in a further recital of the facts as shown by the evidence.

On the 5th day of March, 1874, the appellant, a citizen of Illinois, made a subdivision, entitling the same GORMLEY'S ADDITION TO GLENCOE, of the south west quarter (S. W. ¼) of section seven (7), and W. ½, N. E. ¼, N. W. ¼, Section 18, township forty-two (42), north, range thirteen (13), east of the third principal meridian (3d P. M.), in Cook county, State of Illinois, said

premises being within the limits of the village of Glencoe, subdividing said property into blocks and lots. He acknowledged the plat thereof before a justice of the peace, had it certified to by the county surveyor, and duly recorded in the recorder's office of said county. (Rec., 97, 100.) Appellant, apparently regardless of the fraud upon appellee and others which he would be confessing thereby, claimed upon his examination as a witness that no survey had ever been made of the said quarter section, he having merely paid the surveyor $20 for a plat and not for a survey. (Rec., 219, 220, 225, 226; .) This in spite of the fact that the surveyor, Wolcott, certifies that "I have *surveyed* and subdivided the said quarter section" (Rec., 100), and that appellant had acknowledged the said subdivision (apparently valid on its face) as proprietor thereof, and further had acknowledged the same as made "of his own free will and deed." This, too, in spite of the fact that he subsequently had conveyed the said premises under the plat description to various parties as hereinafter stated. (Rec., 220, 221, 222, 224.)

Apparently this statement was made to aid his counsel, Mr. Culver, in his claim that the plat did not comply with the requirements of the statute (Rec., 96, 97), as announced in *Village of Winnetka* v. *Prouty*, 107 Ill., 218. That said plat does, however, comply with the requirements of the statute as announced in *Town of Lake View* v. *Le Bahn*, 120 Ill., 92, and that the case of *Winnetka* v. *Prouty*, *supra*, does not apply, seems perfectly clear, and we do not understand that the present counsel for appellant questions this. Appellant's claim (entitled to no weight in view of the surveyor's certificate and appellant's acts) that no survey was made, seems based on

purely negative evidence, viz: on the fact that he only paid $20 for the plat, that nothing in terms was said by him to Wolcott about a survey, and that he had not discovered any surveyor's stakes. (Rec., 219, 220, 225, 226.)

The court below, properly, as we think, held that appellant was estopped to raise as against appellee, the question of any alleged defects in said plat. (Rec., 40.)

This property had been conveyed to appellant by his father, Marcus Gormley, and his wife, by warranty deed, dated May 4, 1861, and recorded in said recorder's office, June 5, 1861, but which deed had never been re-recorded since the great Chicago fire of October 8th and 9, 1871. (Rec., 99, 100.) Marcus Gormley derived title to said property from the United States of America, by patent dated March 10, 1843. (Rec., 185, 186.)

On May 15, 1877, said appellant and wife, with Morton Culver and others executed a trust deed, duly recorded in said Recorder's office, to Adolph Loeb, as trustee, conveying the premises in dispute in said Gormley's addition, describing the same by said plat of Gormley's addition, to secure a note of said Michael Gormley and said Morton Culver, solicitor for appellant in the Circuit court, (and his solicitor since at least May 15, 1877) for $10,000, of even date with said trust deed payable to their own order, and by them endorsed, due three years after date, with interest at nine per cent. per annum. This trust deed was duly acknowledged *and released and conveyed in due form of law, all homestead rights by the grantors in said premises conveyed.* (Rec., 107 to 112.) The interest on said note not being paid, the premises in dispute with other property mentioned in the trust deed were duly sold, September 10, 1878, under the powers of sale

in said trust deed, and conveyed by deeds of said last mentioned date, a portion thereof to Edward Clark, the father of appellee, and a portion thereof, to one Sarah J. Condon, an unmarried woman, (she subsequently conveying the premises deeded to her to said appellee on the 29th day of March, 1884), and portions thereof to A. H. Hovey and W. H. Stubbings, respectively. (Rec., 111 to 121, 139.)

Edward Clark died October 14, 1882, and appellee acquired title to the portion of the premises in dispute conveyed to said Edward Clark, as sole heir at law of his said father, the said premises, descending to him as intestate property, not being mentioned in the will of said Edward Clark (Rec., 43 to 45, 75 to 80, 129 to 133). Some three years after the sale by Loeb, viz.: on October 4, 1881, on a petition signed by Michael Gormley, the appellant (Rec., 82, 88, 92), the village council of Glencoe, vacated Adams street between Grove street and Bluff street in said Gormley's Addition (Rec., 92, 154, 164). Appellant's house, barn and outhouses stood on this portion of Adams street so vacated, and said portion of Adams street so vacated was between blocks 8 and 9 of Gormley's Addition to Glencoe, (sold and conveyed by Loeb, September 10, 1878, to said Edward Clark, as aforesaid (Rec. 113, 183)); forming means of ingress and egress to some twenty-four lots in said two blocks. This ordinance was posted and a duly certified copy was filed in the Recorder's office by appellant October 17, 1881. (Rec., 92, 97, 98, 101, 154.)

Not content with this outrage upon the rights of Edward Clark, said appellant, on January 3, 1882, appeared before the said council and falsely and fraudulently representing that he was the owner of the premises

through which the streets sought to be vacated passed, (Rec., 82, 83, 92, 93, 87, 88, 167 to 173, 134 to 141, 143 to 153, 154, 155), procured the passage of an ordinance vacating a number of streets in said Gormley's Addition, which as your Honors will see by inspection, completely encircled the property deeded by Loeb to Clark and Condon, preventing all ingress and egress to said Clark and Condon property, except by passage over said vacated streets, of which appellant was trying to re-invest himself with title. (Rec., 94, 95, 183; .)

Appellant and Fletcher, a member of the village council, deny that Gormley made any representations as to his owning the property through which the streets sought to be vacated passed, but the ordinance passed January 3, 1882, was in Gormley's own handwriting, (Rec., 159, 224, 225), the witnesses Schramm, Day, the clerk of the village, Hovey, the president of the council, and Sherwood and Dennis, members of the council, five witnesses in all, swear appellant did make such statements.

Law, a village councilman and a witness for appellant, swears that such a statement was made at the council meeting on January 3, 1882, and in Gormley's presence, but thinks that Dennis made it, and not Gormley, though he admits that it may have been Gormley, (Rec., 196, 197), and further admits that Gormley did not contradict such statement. (Rec., 198.)

Fletcher swears that when the ordinance of January 3, 1881, was passed, he supposed Gormley owned the land through which the streets sought to be vacated passed, (Rec., 202), as all the other members of the council thought beyond question.

Gormley, on cross-examination, cannot mention any lot or block in said Gormley's Addition, which, at the dates of the passage of the ordinances of October 4, 1881, and January 3, 1882, had not been sold or mortgaged, and the encumbrance foreclosed. (Rec., 182, 183.)

The village council of Glencoe discovering the imposition practiced by Gormley upon it, reconsidered, on January 12, 1882, the vote on the passage of the ordinance of January 3, 1882, and on January 24, 1882, in order to prevent any technical question arising as to the validity of the action of January 12, 1882, again reconsidered the vote for the passage of said ordinance of January 3, 1882.

To make sure of rescinding any vacation ordinances, the said council on February 7, 1882, because of this same imposition practiced upon it, passed an ordinance providing "that any and all ordinances heretofore passed "by this council, vacating any streets or parts of streets "in Gormley's addition to Glencoe, or purporting so to "do, are hereby repealed, and all the streets and parts of "streets shown in the first and original recorded plat of "said addition are hereby declared to be public streets." This last ordinance was duly posted. (Rec., 163, 165, 166, 187–191.)

The ordinance of January 3, 1882, was never posted by the clerk, because of its being repealed before the time had expired within which by law the clerk was required to post it (Rec., 83, 87, 155:), and neither the ordinance of October 4, 1881, nor that of January 3, 1882, nor any of the rescinding ordinances or resolutions were entered at length on the ordinance book, inasmuch as the vacation ordinances were repealed. (Rec., 154, 155, 156, 157, 160, 161, 162, 163.)

Appellant, shortly after the passage of the ordinance of January 3, 1882, applied to John L. Day, the clerk of the village, to post said ordinance (Rec., 83), and Day replied that he should take the full time allowed him by law to do so, viz: thirty days. (Rec., 83.) Subsequently appellant applied to Day for a certified copy of said ordinance of January 3, 1882. Day said he would take counsel before giving a certified copy thereof, but never gave appellant such certified copy. (Rec., 84, 85, 87.)

Appellant thereupon copied the minutes of the meeting of January 3, 1882, and posted said copy (Rec., 87, 89, 90, 97, 98, 101, 105), and thereafter filed in the recorder's office of Cook county, Illinois, a sworn copy thereof. (Rec., 97, 98, 101–106.)

It is perfectly evident from the evidence and record in this case that appellant was determined to fraudulently cloud and injure the title of appellee's property, and that Day very properly was doing the best he could, so far as his duty would permit, to prevent the perpetration of such an outrage. (See answer of Day in *Gormley* v. *Day*, Rec., 67–69.)

On January 17, 1882, appellant filed in the Superior court of Cook county, Illinois, a petition for a mandamus, asking that Day be required as clerk of the village to "immediately post certified copies of said ordinance (of "January 3, 1882), in three of the most public places of "said village (of Glencoe), as required by law, and also "to file for record in the recorder's office of said Cook "county, a duly certified copy of said ordinance, or to fur- "nish to your petitioner a duly certified copy of said ordi- "nance upon the tender to said Day therefor, of his legal "fees." (Rec., 50–52, 52–66.) Day filed his answer

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to said petition January 28, 1882 (Rec., 66–69); to which a replication was filed January 30, 1882, (Rec., 69, 70.) The cause was tried January 31, 1882, a jury being waived, and after hearing the evidence, the court, Hon. Joseph E. Gary, now a judge of the Appellate court for the First district of Illinois, dismissed the petition at appellant's costs (Rec., 70–72, 85.)

Appellant appealed to the said Appellate court, where, on April 10, 1882, the judgment of the Superior court was affirmed (Rec., 80, 81.)

On November 12, 1884, some seven months after the commencement of the action now pending on appeal before your Honors, but before the final disposition thereof by the Circuit court, appellant sued out of the Supreme court of Illinois, a writ of error to the judgment aforesaid of said Appellate court (Rec., 237, 238). Subsequently, on May 15, 1885, the said Supreme court affirmed the judgment of said Appellate court. The opinion of the Supreme court is reported in Vol. 114, page 185 of the Illinois reports, in which the said court fully sustains Day's position, and holds that the resolution of January 24, 1882, rescinded the ordinance of January 3, 1882, which ordinance the court holds was never in force. That Michael Gormley did not want a certified copy of the ordinance of January 3, 1882, for any proper purpose, but rather the contrary, and finally that "in any view to "be taken of this case we have been unable to discover "any merits in it."

Appellant, after making the subdivision aforesaid, sold blocks 7 and 2 to Frederick Root, a deputy clerk in the United States court; two lots to John Miller, in block 6, and two lots in block 6 to Mrs. Culver, describing the property as in Gormley's addition to Glencoe. At the

sale by Loeb, lots were also sold to W. H. Stubbings and Hovey. (Rec., 14, 112, 113, 139, 220, 221, 222.) Appellant put down sidewalks on both sides of Washington avenue, between said blocks 2 and 7, and on both the east and west sides of said blocks 2 and 7, Root paying him for the same. (Rec., 222, 223.) A ditch was cut by appellant on the south side of Washington avenue, and on Wood street. (Rec., 223.) Various streets were thrown up with a plow by appellant. (Rec., 210, 211, 219.) The village of Glencoe also did street and sidewalk paving, and work of various kinds on streets and sidewalks in said Gormley's addition. (Rec., 226, 227, 228, 229, 230.) Portions of various streets in said Gormley's addition were graded and and ditched. (Rec., 231.) After the foreclosure by Loeb, appellee paid all the taxes upon the premises in dispute, Gormley paying nothing. (Rec., 207, 210, 212, 213, 214, 215, 216, 217, 224, 232, 233, 234.) Appellant seems to have fenced in the whole of Gormley's addition to Glencoe, though not claiming to own the property sold to Root, Miller or Mrs. Culver, or a homestead in the property sold under the Loeb trust deed. (Rec., 207, 224, 225.)

On or about March 21, 1884, Smith, representing the appellee, went to Glencoe to see appellant, and requested him to take a lease from appellee. This, appellant Gormley refused to do, and said that he again "proposed "to see if he could not get these streets and alleys "vacated, as they were his." (Rec., 141, 142.) Appellant admits the truth of Smith's evidence about the lease, but denies his evidence about the proposed vacation of the streets. But after the commencement of this suit, appellant again, as we have said, commenced

his fraudulent and dishonest attempt to injure the title to appellant's property by suing out a writ of error in *Gormley* v. *Day*, from the Supreme court of Illinois to the Appellate court, showing that Smith's evidence was all true beyond question. Shortly prior to the April election of 1884, it was common talk that Morton Culver, the attorney for appellant, and appellant himself, were urging the election of certain persons as members of the village council, who could be depended upon to again vacate the streets in Gormley's said addition. (Rec., 86, 87, 88, 89, 90, 91.) What was called the opposition ticket at the village spring election in 1884, was largely composed of the friends of appellant, among them Morton Culver, his attorney; Henry Taylor, his brother-in-law; John Beck and Joseph Diedrich, old friends of his. (Rec., 91, 158, 159, 167.)

Under these circumstances, apprehensive that appellatn would again be able, with even better success than before, to get streets encircling appellee's land vacated, under the theory that then the title of the streets would rest in him (appellant), appellee then and now a citizen of New York, filed the petition in the case at bar.

The petition is filed under the provisions of chapter 116, Revised Statutes of Illinois, what is popularly called the "Burnt Record Act." It sets up in detail the title of appellee to the property in controversy from the United States to the petitioner, giving the full description of the property, alleges the destruction of the records of Cook county on October 8 and 9, 1871 (the date of the great Chicago fire), the destruction at the same time of appellee's record title, the proceedings and acts of the council of the village of Glencoe, John L. Day, the clerk of said village, and of Michael Gormley relative to the ordinances

of October 4, 1881, and January 3, 1882, as hereinbefore detailed; the proceedings in the suit of *Gormley* v. *Day*, in the Superior and Appellate courts; alleges that Gormley is in possession of petitioner's land and is about to attempt to further fraudulently cloud the petitioner's title to his said property by procuring a vacation of the streets encircling petitioner's land, and a copy of such vacation through the present clerk and council of said village or their successors, which copy he intends to record in the recorder's office of Cook county, and asks that the members of the said council and said Day be enjoined from such illegal acts. The petitioner makes various persons, as required by the "Burnt Record act," parties who claimed, or had claimed some interest in and to said petitioner's property, by conveyances since October 8 and 9, 1871, or otherwise, or who had joined in deeds conveying part or the whole of said premises since October 8 and 9, 1871, and claimed that such interests were subordinate to those of petitioner. He made the village of Glencoe and Council and Clerk thereof, Michael Gormley and his wife, "all whom it may concern," and others, parties defendant, and asks that said defendants, all citizens of states other than New York, might be required to answer the petition, but not under oath, their respective oaths being waived: "That the said ordinances of "January 3, 1882, and October 4, 1881, and the copies "thereof, so as aforesaid recorded in the recorder's office "of Cook county, Illinois, be declared null and void and "of no effect whatever; that at the final hearing of this "cause, a decree may be entered confirming and establishing in your petitioner in fee simple, absolute, free "and clear of all liens and incumbrances whatsoever, the "title to said lots and blocks so as aforesaid mentioned

"as owned by your petitioner, that in and by such "decree the United States marshal for the Northern dis- "trict of Illinois be ordered and directed to remove said "Michael Gormley, his agents and attorneys, and all "other persons whatsoever, from the possession of said "lots and blocks, so owned by your petitioner, and "place in possession of the same your petitioner and his "agents. That the said defendants, the village of Glen- "coe, the said * * * members of the said council, "each and all of them, and their successors in office, may "be restrained and prohibited by the writ of injunction of "this honorable court until the further order of this court. "from enacting and passing any ordinance or ordinances "vacating any street or streets, or part or parts of "streets next adjoining the said lots and blocks so as "aforesaid mentioned as owned by your petitioner, "without the consent of your petitioner, or his future "grantee or grantees, if any, or vacating any street or "streets, the vacation of which will prevent ingress or "egress therefrom to the lots and blocks mentioned as "owned by your petitioner so as aforesaid, without the "consent of your petitioner and his future grantee or "grantees, if any. That the said John L. Day, and his "successor in office, may be likewise and in like manner "restrained and prohibited from furnishing any copy of "any ordinance or ordinances the passage of which is "hereby prayed to be enjoined."

"That the said Michael Gormley, his agents, attorneys "and solicitors may be likewise and like manner prohib- "ited and restrained from applying to said village or such "council members thereof, their or its successors in of- "fice for the passage of such ordinance or ordinances, "the passage of which is hereby asked to be restrained

"and prohibited, and from procuring the passage of such "ordinance or ordinances or from recording in the re- "corder's office of Cook county, Illinois, any copy or "copies of any such ordinance or ordinances.

"That at the final hearing of this cause said injunction "so prayed for be made perpetual."

The petitioner further prayed for the writ of injunction as asked for, and the writ of subpœna directed to the marshal commanding him to summon the defendants.

And the petitioner prayed "for such other and further "relief as to equity and good conscience appertains and "as to your Honors shall seem meet."

The petition was duly sworn to by Frank C. Smith, as agent of the petitioner.

On March 31, 1884, a temporary injunction was issued against the said village of Glencoe, and the trustees and clerk thereof as prayed for in said petition by the Circuit court, the petitioner appearing by McCoy, Pope & McCoy, his solicitors, and the defendants enjoined appearing in court by N. T. Fitch, their solicitor.

The said writ was duly served upon the parties enjoined upon the last named day.

On June 2, 1884, Michael Gormley, and Eliza Gormley, by Morton Culver, their solicitor, filed their demurrer to said petition. (Rec., 20, 21.)

June 14, 1884, an order was entered before the District Judge, requiring that publication be made by the clerk of the court of notice to the defendants to the petition as required by section 17, chapter 116, Hurd's revised statutes Illinois, and copies thereof sent to James N. Johnson and Eloisa Johnson, his wife, at Northfield, Washington county, Vermont, within ten days after the first publication of said notice. (Rec., 22.)

On said 14th day of June, 1884, an order was entered by the judge of the court, that publication be made against James N. Johnson, and Eloisa Johnson, his wife, as required by the United States statutes, when defendants are not inhabitants of, and are not found within the district where suit is brought, and do not voluntarily appear in said suit. (Rec., 23.)

Publication was duly made, and notices sent as ordered by the court. (Rec., 22–35.) Service of process was duly had upon all defendants, except where their appearance was duly entered, and every defendant was duly defaulted, except Gormley and wife, and Culver and wife.

The 23d day of June, 1884, the demurrer of Michael and Eliza Gormley was withdrawn, and they filed their answer to said petition September 15, 1884.

The defendants aforesaid in said answer denied that the petitioner owned the premises claimed, but alleged that he held the legal title thereto in trust for Michael Gormley.

They admitted that they had made the trust deed to Loeb before mentioned, and that Michael Gormley filed for record "in the recorder's office of Cook county, Illi-"nois, a certain paper purporting to be a subdivision of "the south-west quarter of section seven, and the west "half of the north-east quarter of the north-west quar-"ter of section eighteen, all in township forty-two north "of range thirteen, east of the third principal meridian, "Cook county, Illinois." The defendants charged, "That "such pretended plat and the record thereof, were not in "compliance with the laws of Illinois, and that in fact "there never was any dedication to public or private use "of any street or streets, alley or alleys, and these de-

" fendants also say that no part of said land pretended to " be included in said plat was ever staked, nor any monu- " ment or corner located, or any courses or distances in- " dicated as required by law, nor any alleys, lots, blocks " or streets, located in said pretended plat as required by " law."

They admitted the destruction of the record as alleged, the petitioning by Michael Gormley of the council of Glencoe to pass the ordinance of October 4, 1881, claimed that said ordinance was valid, and that the strip of ground occupied by the portion of Adams street so vacated, together with other vacated property, was then and had been used and occupied for the last forty years by the said Michael Gormley as a homestead. That neither he nor his wife had ever relinquished their homestead rights therein, and they claimed the said land and the house thereon as their homestead, as well as the lands adjacent and adjoining, in said portions of sections 7 and 18. That the land occupied by said supposed Adams street was never and is not at present used as a public or even private highway, but has always been enclosed by a fence for the last forty years, and for the last twenty-five years past has been enjoyed and controlled by Michael Gormley and his family.

That if the passing of the ordinance of October 4, 1881, the publishing and recording of the same, had injured any property claimed by petitioner, that he had no remedy whatever against them, but the sole remedy that he had was at law, and against the village of Glencoe. They denied that the passing of any ordinances of vacation injured or clouded the title to petitioners' land.

They admitted that Michael Gormley had presented the ordinance of January 3, 1882, to the said council for

passage, but they denied the making of any false or fraudulent representation to the council in relation thereto. They claimed that the last mentioned ordinance was regularly passed, and that the title to the land thereby vacated reverted instantly to said Michael Gormley, and that the attempt, on January 12, January 24, and February 7, 1882, to annul said last mentioned ordinance, and to re-establish the streets in Gormley's addition were void.

They admitted that it might be true that John L. Day had never posted the ordinance of January 3, 1882, but said that Michael Gormley had, as required by law, and had recorded in the said recorder's office a true copy thereof, as required by law, and claimed that such proceedings did not cloud or impair such title as the petitioner had to the lands claimed by him. They denied that the suit in the Superior court and the proceedings on the appeal to the Appellate court of *Gormley* v. *Day*, had any effect upon the case at all. The defendants further said in their answer, "that so far as regards the assertion in com-
"plainants' bill, that this defendant, Michael Gormley, in-
"tended to have the council of the village of Glencoe pass
"another ordinance, similar to the one of January 3, 1882,
"and of October 4, 1881, they know nothing in regard
"thereto; but this defendant, Michael Gormley, says he
"presumes this court will not curtail him of any of his rights
"as a citizen of the United States, and that if he shall see
"proper at any time to petition the council of the village
"for anything for which it has cognizance he will do so."

The defendants alleged that the entire one hundred and sixty acres for the last forty years had been enclosed by a fence, excepting the north thirty-three feet thereof, which was a part of an old country road, known as South avenue, which had been frequently used by the public as

a highway for over thirty years; and second, excepting the east thirty-three feet of said 160 acres, which was a public street, known as Grove street. They denied the right of the petitioner to the relief prayed. The petition was sworn to by Michael Gormley. (Rec., 25–31.) answer

On the 15th day of September, 1884, Morton Culver and his wife filed a disclaimer of any right or title in the premises claimed by petitioner. (Rec., 30.) As the court will see, the sole issues in the case are those raised by the answer of Michael Gormley and wife. All other questions being eliminated from the case.

On the 9th day of December, 1885, the case came to a hearing and a decree was duly entered in favor of the petitioner. The decree found that the petitioner was the owner in fee simple absolute of the premises claimed by him with the "buildings, tenements, rights, privileges, "hereditaments, easements and appurtenances thereto "appertaining and belonging, free and clear from all "liens, claims and encumbrances whatsoever, and "that the defendants, Michael and Eliza Gormley, "are now and were at the date of the filing this "petition in possession of said lots and blocks." That the petitioner derived and held title to the property claimed as stated in said petition. That the public records of Cook county, Illinois, showing the title of said petitioner to said property were destroyed by fire on the 8th and 9th days of October, 1871. That the dwelling house, barn and shop belonging to Michael Gormley were located on the portion of ground shown on the plat of Gormley's addition on that portion of Adams avenue, located between Bluff street and Grove streets, that the ordinance of January 3, 1882, was never posted nor published as required by law, and was by res-

olutions on January 12 and 24, 1882, and by ordinance of February 7, 1882, duly repealed by the council of the village of Glencoe. That the ordinance of October 4, 1881, was passed by said council, and the ordinance duly posted.

The court ordered, adjudged and decreed that the premises in dispute were, at the date of filing the petition, and now are vested in the petitioner in fee simple absolute, "together with all the rights, privileges, ease-"ments, tenements, hereditaments and appurtenances "thereunto appertaining and belonging, and the said "fee simple title in and to said last mentioned lots and "blocks so decreed in said petitioner is hereby established "and confirmed in him, the said Alfred Corning Clark, "together with all the rights, privileges, easements, ten-"ements, hereditaments and appurtenances thereunto ap-"pertaining and belonging, free and clear from all claims, "liens and encumbrances of whatsoever name and "nature."

"The court doth further order, adjudge and decree "that at the date of filing said petition, the said Michael "Gormley, was and is now estopped as against said pe-"titioner, Alfred Corning Clark, his legal representatives, "heirs and assigns of said lots and blocks, or any part "thereof, the title of which is decreed in him the said pe-"titioner, from alleging or claiming any informality or "defect in the plat of said Gormley's addition to Glencoe "aforesaid, and that said Michael and Eliza Gormley have "no homestead rights in any of said lots and blocks "herein decreed in said Alfred Corning Clark, or in any "street or streets, or parts thereof, upon which any of "the said lots and blocks abut as against said Alfred "Corning Clark, his legal representatives, heirs and as-"signs of said lots and blocks, or any part thereof."

The court decreed that the ordinance of January 3, 1882, was never legally posted, that it was annulled and rescinded, and at the date of filing the petition and of entering the decree, together with the copy thereof, filed in said recorder's office, Cook county, Illinois, was null and void, and of no effect whatever.

The court further decreed that at the date of filing the petition, and at the time of entering the decree the title of that portion of Adams avenue shown on the plat of Gormley's addition between Grove street and Bluff street, was vested in fee simple in Michael Gormley, "subject to the "easement in and the right of use of as a street by said "petitioner, Alfred Corning Clark, his heirs, legal repre- "sentatives and assigns, as the owner of lots or parts "thereof, abutting on said portion of said Adams avenue "between Grove street and Bluff street, and the court "doth order, adjudge and decree that said Michael "Gormley, and Eliza Gormley remove from said portion "of said Adams avenue between Grove street and Bluff "street, said dwelling house, barn and shop now on said "last named portion of Adams avenue, on or before the "first day of May, 1886, and that in default of such re- "moval so hereby ordered, upon proof by affidavit of a "demand by said petitioner for such removal upon said "Michael and Eliza Gormley, and service of a certified "copy of this decree by exhibiting and reading the same "to them, and a refusal by said Michael and Eliza Gorm- "ley, or either of them, to obey such order of removal, "the marshal of this district, be and he is hereby in- "structed to so remove said dwelling house, barn and "shop from said portion of Adams avenue as hereby "ordered and directed."

The court further decreed that the petitioner had the

right to immediate possession to the lots and blocks, the title of which was by the decree vested in him, and Michael Gormley and wife were ordered to surrender up possession thereof to the petitioner; that unless they did so, "upon proof by affidavit of a demand made by petitioner upon said Michael Gormley and Eliza Gormley for such possession of said lots and blocks and service of a certified copy of this decree upon said Michael and Eliza Gormley, by exhibiting and reading the same to them, and a refusal by them, or either of them, to obey such decree or order for possession of such lots and blocks, that a writ of assistance directed to the marshal of this district forthwith issue to place the said Alfred Corning Clark in possession of said lots and blocks hereby decreed in him."

The injunction granted against the village of Glencoe, its council and clerk, was dissolved, and all questions as to the right of the court to enjoin the action of the council and clerk were thereby eliminated from the case.

Brief and Argument.

I.

The first position assumed by appellant is that the Circuit court never had jurisdiction of the controversy, under the form of action brought. The argument to sustain this position, as analyzed, is:

First. The assumption that the prime object of the petitioner was to evict appellant from the premises in controversy.

Second. The assumption that the interest of appellee was to deprive appellant of the right of trial by jury and of a second trial under the Illinois statutes relative to ejectment, by bringing suit under the burnt record act, instead of commencing a common law action in ejectment.

Third: That the bringing of suits under the Burnt Record act must be restricted to cases where the remedy at law is inadequate, otherwise the Burnt Record act is unconstitutional, because it deprives a defendant of the right of trial by jury.

The first and second assumptions are clearly without foundation.

The gaining possession of the premises in dispute was and is a mere incident of the litigation. As well might one say that in any and every suit in chancery where the jurisdiction of the court is unquestioned, and where a writ of assistance issues, that, because of the issuance of such writ, the prime object of the complainant must have been

to evict the defendant, as to assert, as appellant in effect does, that in this case because a writ of assistance has issued, therefore the prime object of appellee was to gain possession of the premises in dispute.

The question as to whether the circuit court was, under the circumstances, justified in ordering a writ of assistance to issue, is a distinct and separate question from the question of the jurisdiction of the court to enforce rights conferred by the Burnt Record act.

As to the order for the issuance of the writ of assistance, more hereafter.

If the intent of appellee to deprive appellant of the right of a trial by jury was so obvious, it was a most singular thing that appellant did not, by demanding such trial in the court below, put himself in a position either to frustrate such intent or to take advantage, on an appeal, of a refusal of the court below to grant a trial by jury.

This court will search in vain throughout the record for any suggestion or demand of appellant for such boon he would have this court believe he so much craved.

Appellant's position was that no liability whatever existed on the part of either Michael Gormley or Eliza Gormley for the acts complained of, but that if appellee had any remedy, it was against the village of Glencoe on the common law side of the court (Rec., 27, side paging 49.)

The Supreme court of Illinois has expressly ruled that if one desires a jury trial in a suit under the Burnt Record act, he must demand it in the court below, otherwise he is not in a position to complain in an Appellate court of the absence of such jury trial, as he will be considered as having waived it.

Heacock v. *Hosmer*, 109 Ill., 245-251.

See concurring opinion of Justice Walker in
Heacock v. *Lubuke*, 107 Ill., 396-404.

As no application for a jury trial or desire for it was indicated in the Circuit court, there was no ruling of the lower court on this question and no such ruling is before this tribunal for review. Had there been such an application this court must conclude if such right existed for such jury trial, it would have been granted; not being applied for, it was waived.

The invariable practice of this court, in complete accord with the ruling of the Illinois Supreme court in *Heacock* v. *Hosmer*, *supra*, has been to refuse to allow a question to be raised in this court not raised in the court below.

Bell v. *Bruen*, 1 How., 169.
Doe v. *Watson*, 8 How., 263.
Beek v. *Meagher*, 104 U. S. R., 279.
Clark v. *Fredericks*, 105 U. S. R., 4,

as this court said in

Springer v. *United States*, 102 U. S. R., 586-593.

"The point was not brought to the attention of the "court below and cannot therefore be insisted upon "here."

This court said in

Kearney v. *Case*, 12 Wall., 275, 284:

"We think that it is is almost a necessary inference "where a party is present by counsel and goes to trial "before the court without objection or exception, he has "voluntarily waived his right to a jury, and must be "held in this court to the legal consequences of such a "waiver."

And the well settled rule of this court is that unless a stipulation appears in the record waiving a jury that this court will not review the case when it is tried withont a jury.

Bond v. *Dustin*, 112 U. S. R., 604.
Dundee Mortgage Co. v. *Hughes*, 124 U. S. R., 157.

We submit that this court cares nothing for the motives or intent of appellee in choosing one form of action rather than another. It cannot in the nature of things ascertain motives and intent. The question before this court on this point is not one of *motives* and *intent* but one of *jurisdiction*.

This petition is brought, as we have said, under the provisions of an act enbodied in chapter 116, revised statutes of Illinois. This act was passed in 1872, as soon as possible after the great Chicago fire of October 8 and 9 ,1871. The object of said act was to enable an owner of real estate when his record title to such property was destroyed by fire to restore such record, whether parties to such litigation were in possession or out of possession to such property, and to provide a short statute of limitations to protect such owner against fictitious and colorable claims likely to be urged in the confusion consequent upon a total destruction of the records by fire.

The statutory action provided to carry into effect the provisions of the statute is essentially a chancery suit, and an enlargement of the chancery jurisdiction of the state.

The suit is to be commenced in a court having chancery jurisdiction. The notice to be given and service of

summons to be had is to be given and had in the same manner as may be required in chancery proceedings. The petition, answer, cross-petition, decree and all proceedings in the case, are essentially chancery pleadings and proceedings, and a reference to a master in chancery is provided to take proofs and report findings. The cause is docketed as a chancery case.

That a federal tribunal can enforce such statutory rights upon the chancery side of the court when the citizenship of the parties is such as to give the court jurisdiction is well settled.

This court said in

Clark v. *Smith*, 13 Peters, 195, 203, 204.

"The state legislature certainly have no authority to "prescribe the forms and modes of proceeding in the "courts of the United States; but having created a right "and at the same time prescribed the remedy to enforce "it, if the remedy prescribed is substantially consistent "with the ordinary modes of proceeding on the chancery "side of the federal courts, no reason exists why it should "not be pursued in the same form as it is in the state "courts; on the contrary, propriety and convenience sug- "gest, that the practice should not materially differ, "where titles to lands are the subjects of investigation. "And such is the constant course of the Federal courts. "For instance, in Tennessee, the legislature has provided "that the courts of equity may divest a title and vest it "in another party to the suit; and that the same decree "shall operate as a legal conveyance. So, in Kentucky, "the legislature has declared, that the courts may appoint "a commissioner to convey, as the attorney in fact of a "litigant party; and that such deed shall pass the title; in

"both instances, binding infants and femes covert, if ne-
"sary. The federal courts in the states referred to,
"have adopted the same practice, for many years, with-
"out a doubt having been entertained of its propriety. It
"may be said, with truth, that this is a mode of convey-
"ance and of passing title which the states have the ex-
"clusive right to regulate; still the same statute that con-
"ferred the power thus to decree a conveyance, pre-
"scribed the mode of proceeding; and had the form of
"the remedy been rejected by the courts of the United
"States, the right to have such record conveyance would
"have fallen with it, as they could not be separated.

"The undoubted truth is, that when investigating and
"decreeing on titles in this country, we must deal with
"them, in practice, as we find them, and accommodate our
"modes of proceeding, in a considerable degree, to the
"nature of the case and the character of the equities in-
"volved in the controversy; so as to give effect to state
"legislation and state policy, not departing, however,
"from what legitimately belongs to the practice of a court
"of chancery."

To the same effect are:

Ex parte McNiel, 13 Wall., 236.
Broderick's Will, 21 Wall., 503.
Fitch v. *Creighton*, 24 How., 159.
Holland v. *Challen*, 110 U. S. R., 15.
Reynolds v. *Crawfordsville First National Bank*, 112 U. S. R., 405.

As it cannot, with success, be contended that the Circuit court has not jurisdiction of the class of case to which the case at bar belongs, we submit that the only further test of jurisdiction is as to the averments in the petition and the proof sustaining such averments. Chapter 116,

section 16, Illinois Revised Statutes, Starr & Curtiss edition, provides what the petition shall contain and how it shall be sworn to.

The court will see by inspection that all the requisites of the statute were fully complied with in the petition in this case and fully sustained by proof. Counsel for appellant does not attempt to controvert this. There can be no question then that the Circuit court had jurisdiction of the cause.

This precise point has been decided in *Gage* v. *Carahèr*, *supra*. The court therein said:

"It is contended that this proceeding is not properly "considered under the act known as the 'burnt records "act.' This is a misapprehension. * * * That the "effect of the proceeding may be to remove a cloud "from the petitioner's title cannot be regarded as a test "of whether the proceeding is properly under the act. "That will, in all cases, depend upon the case made by "the petition and proofs thereunder."

* * * * *

In the case at bar the character of the title of petitioner was set out in detail from the government to the petitioner, with dates of record of deeds. The destruction of the records of Cook county on October 8th and 9th, 1871, and of petitioner's record title before the fire, was averred. The names of all persons who have claimed or now claim some interest, in and to said lots and blocks owned by your petitioner by conveyance since October 8 and 9, 1871, or otherwise, or have joined in deeds conveying part or the whole of said premises of your petitioner since October 8 and 9, 1871 (Record 7), and "all whom "it may concern" were inserted in the petition and made defendants thereto. The nature of the claim or alleged

title of defendants other than that of the Gormleys and that of the village and its officers was not stated in the petition, as it was not necessary.

Gage v. *Caraher*, 125 Ill., 447.
Smith v. *Hutchinson*, 108 Ill., 662.

Any comment, therefore, by us as to the nature of their respective claims or titles, whether existing before or after the destruction of the records, would be improper, except as it is shown by the evidence in this case. It is sufficient to say that with the exception of the Culvers and Gormleys they were defaulted and their interests, whatever they were, extinguished by decree rendered. The claims of the Gormleys and that of the village and its officers were set out at large. It was advisable to do this so as to enable evidence of the Appellate and Superior court proceedings to be given. It was necessary under the statute to make the Gormleys parties and with them necessarily the village of Glencoe and its officers as inextricably mixed up with them in their claim.

There was a complete gap in petitioner's recorded chain of title caused by the record being destroyed, made before the Chicago fire of October 8 and 9, 1871, of the warranty deed from Marcus Gormley and wife to Michael Gormley, dated May 4, 1861, recorded in book 214 of deeds, at page 340, in the recorder's office of Cook county, Illinois, June 5, 1861. This deed had never been re-recorded since the great Chicago fire. (Rec., 99 to 101.) This instrument was in the possession, as it turned out of appellant, liable at any moment to be destroyed or lost. It was only by a subpœna *duces tecum* that its production was enforced, and that its existence or loss and destruction became known. (Rec., 95.) A

gap of one deed as thoroughly vitiated and destroyed appellee's record title, as a gap caused by the absence of fifty deeds. The blackmailing scandalous character of appellant's claim places it in the same category of fictitious, fraudulent, and colorable claims which the Burnt Record act was expressly passed to meet, and the decree provided for therein to act as a short statute of limitations against the enforcement thereof. The acts and character of appellant gave great reason to appellee to suppose that if there was any advantage to be gained or annoyance given appellee, the deed from Marcus Gormley might at any moment be destroyed, if in existence. The act is broad and comprehensive in its character, and it is intended thereby that when a court has once acquired jurisdiction that it shall go on and adjudicate upon any and all claims and titles to the property in dispute.

Judge Blodgett, the United States District Judge in Chicago, while sitting as a circuit judge of the Federal court in 1882, in an able opinion, reported in *Smith* v. *Gage*, 11 Biss., 217, construed the provisions of the Burnt Record act. He said:

"As to the jurisdiction of the court to consider and "pass upon the validity of this tax-title in this form of "proceeding, this defendant's claim of title under his tax-"deed having accrued subsequent to the destruction of "the records I at first had some doubts, but a more "careful examination of the statute authorizing this form "of action has led me to the conclusion that complainant "may in this action attack defendant's subsequently ac-"quired title, and my reasons for this conclusion are "briefly these:

"The act provides that the petition or bill for restora-"tion of title shall set out:

title of defendants other than that of the Gormleys and that of the village and its officers was not stated in the petition, as it was not necessary.

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"The act provides that the petition or bill for restora-"tion of title shall set out:

"*First.* The extent of the estate in the land in question "claimed by the complainant or petitioner, and for whom, "when and in what mode he derived his title thereto; he "shall give the names of all persons owning or claiming "any estate in fee in said lands, or any part thereof, and "also all persons to whom any such lands have been con- "veyed, and the deed or deeds of such conveyances as "shall have been recorded in the office of the recorder of "deeds since the time of the destruction of such records, "and prior to the filing of such petition, and their resi- "dences, so far as the same are known.

"*Second.* All persons so named in the petition shall be "made defendants, and shall be notified of said suit by "summons or by publication of notice in the same manner "as may be required in chancery proceedings in this state.

"*Third.* By section 18, any person interested may "oppose such petition, may demur or answer the bill, or "file a cross-bill, if he desires to do so.

"*Fourth.* By section 20, it is declared that it shall be "competent for the court, by its decree in such cases, to "determine in whom the title in any or all of the lands "described in the petition is vested, whether in the peti- "tioner or any other of the parties before the court.

"Here, it will be seen, is ample provision for bringing "all claimants to any title or interest in the lands before "the court, and it is made the duty of the court to "determine in which of the persons so before it the title "is vested. It seems to me to have been the purpose of "the legislature to make this proceeding a sort of drag "net into which all conflicting claimants of title or "interest in the land might be drawn, and where "the court, with all the parties before it, should deter- "mine their respective rights. It is not limited to titles

"or claims which accrued before the destruction of "the records, but in express terms provided that 'all "persons to whom such land shall have been conveyed, "and the deed or deeds of such conveyance shall have "been recorded in the office of the recorder of deeds of "such county since the destruction of the records,' shall "be made parties to the proceeding; evidently intending "that the petitioner must bring in all persons who appear "of record to have any deed or conveyance of any inter- "est in the land, so that their respective titles or claims "may be considered and passed upon. It is further pro- "vided that unknown owners or claimants may be brought "in under the designation of 'all whom it may concern,' "and the decree rendered in such proceeding is to be final "and conclusive, unless appealed in a certain time limited "by the act, except as to persons in actual possession of the "premises, or persons to whom the lands have been con- "veyed, and whose deeds have been recorded since the "destruction of the records and prior to the time of filing "the petition, who are not made defendants by name.

"It is possible that the court on the final hearing of such "a case, may, in its discretion as a court of equity, where "two conflicting titles are presented, the validity of which "can be determined in a court of law, by the express terms "of its decree, remit the parties holding such titles to a "court of law for a trial of their rights; but this would be "purely a matter of equitable discretion, and does not limit "the power of the court in this proceeding to settle the "entire title by its decree."

The Supreme court of Illinois has recently followed the doctrine of the case in Bissell's Reports, in

Gage et al. v. *Caraher*, 125 Ill., 447.

The court says, in this last mentioned case:

"It is no objection to proceeding under the statute, "where the facts alleged and proved bring the case within "its provisions, that there are adverse claimants. What- "ever may be the power of the court of chancery, where "there are controverted titles, to restore, by its decree, the "evidences of the title in the respective parties as they "were before the destruction of the record, and then, in its "discretion, remit the parties to a court of law to there try "their titles, it is manifest no such course was contem- "plated by the statute, or necessary in cases under it. By "the act (section 10) the court is given power to inquire "into the condition of any title to or interest in the land in "question, and to make all such orders, judgments or de- "crees as may be necessary to determine and establish said "title or interest, either of a legal or equitable character; "and (section 15) in such decrees, whether *pro confesso* "or otherwise, to determine and decree in whom the title "is vested. The court is authorized and required to in- "vestigate the interest of all the parties in the premises in "question (*Mulvey* v. *Gibbons*, 87 Ill., 367), and to decree "in favor of the better title. (*Robinson* v. *Ferguson*, 78 "Ill., 538; *Smith* v. *Hutchinson*, 108 *id.*, 662; *Smith* v. "*Gage*, 11 Biss., 217.) The decrees so entered, are by the "statute (section 16) made, as to the title so found, for- "ever binding and conclusive. Ample provision is made "by the eighteenth section of the act for presenting oppos- "ing or conflicting claims of title.

"It is also objected that the petition is insufficient to war- "rant the court in finding the tax deed void, for the reason "that it does not aver the invalidity of such tax deeds, as "is required to be done in bills to remove tax deeds as "clouds upon titles. (*Moore* v. *Wayman et al.*, 107 Ill., "195; *Farwell* v. *Harding et al.*, 96 *id.*, 32; *Barnett* v.

"*Kline*, 60 *id.*, 205), and proof thereof was not made by "the petitioner. This position is untenable. All that is re- "quired in respect of adverse claimants or their titles is, "that such claimant shall be named in the petition and "made defendant. Nothing more is required to give the "court jurisdiction, under the statute, to investigate all "claims of title to the premises, and by its decree establish "and confirm the title in the person in whom it is found to "be vested, and to make all such orders, judgments and "decrees as shall be necessary to that end. It was said in "*Smith* v. *Hutchinson*, *supra*, that the petitioner was re- "quired to establish the validity of his own title only, and "'when a person is made defendant in a petition of this "character, it devolves upon him to establish the title he "may claim to the property.' If appellants intended to "rely on their title set up in their answers, they were re- "quired to show its validity."

In *Robinson* v. *Ferguson*, *et al.*, 78 Ill., 538, 548, the defense was that Ferguson was in the open adverse actual possession and occupancy of the land in dispute from 1832 to 1873.

The court said in that case "The statute (Burnt Rec- "ord, Act.,) under which the proceeding was instituted, "authorized a decree in favor of the better title."

The same court said in

Heacock v. *Lubuke*, 107 Ill., 396, 400,

"It is said that this was a proceeding in the nature of a "bill to quiet title, and as complainant was not in possession, "the bill would not lie. This court has held, in a number "of cases, that courts of chancery will not interfere to re- "move a cloud upon the title of a complainant unless the "complainant is in the lawful possession of the land, or

"unless the land is unoccupied; but those cases have no "bearing whatever on a case of this character. This "petition was filed under chapter 116 of the revised "statutes of 1874, and was fully warranted by the terms "of the statute. Section 16 of the act expressly author- "izes the petitioner to make all parties in possession or "claiming an interest in the land parties defendant to the "petition, thus creating a clear and marked distinction "between a case of this character and a bill to quiet title, "where the complainant must be in possession of the land "vacant before a court of chancery will entertain a bill."

As to the conclusiveness of a decree under the Burnt Record Act see also

Bradish v. *Grant*, 119 Ill., 606.

It will be seen from these citations that a petition under the Burnt Record Act can be filed by one either in or out of possession of property in controversy, against another, whether in or out of possession of such property, that the petitioners are not required to set out the title of the adverse claimants, but simply to make them parties, and then the court can adjudicate upon their respective titles, decreeing in whom the superior title shall vest, whether such titles be legal or equitable titles.

In that the petition can be filed by a person not in possession, and that the petitioner is not required to set out the adverse title, the act is like the Nebraska statute under consideration in *Holland* v. *Challen*, 110 U. S. R., 15, and the Indiana statute referred to in *Reynolds* v. *Crawfordsville First National Bank*, 112 U. S. R., 405, where your Honors have expressly ruled equity suits may be brought to remove clouds by a party not in possession of the land in controversy, if the state statute so authorizes.

The mere fact that in a proceeding of an equitable nature, a legal title is to be adjudicated upon is immaterial. This your Honors have decided.

Holland v. *Challen, supra.*

Your Honors say in that case:

"*If the controversy be one in which a court of equity "only can afford the relief prayed for, its jurisdiction is "unaffected by the character of the questions involved.*"

This clause just cited (the italics are ours) is peculiarly in point in the case at bar.

It is idle to say that a court of law could give the relief sought under the Burnt Record Act, in this case. The record title could not be there restored nor the cloud be removed caused by the recording of the copies of the ordinance of January 23, 1882, in the recorder's office, nor the easement declared and adjudicated in the portion of Adams street on which petitioners' lots and blocks abutted, and the continuous nuisance abated caused by the blocking up of the street by appellant's buildings. *As a question of jurisdiction therefore, as the relief prayed for could not be obtained in a court of law, the jurisdiction of the Circuit court was not affected by the character of the questions involved.*

The preventive remedy for a continuous or permanent or constantly recurring or irreparable injury or nuisance is in equity and by injunction.

Wood on Nuisances 2d Ed., 891, 892, 893, 896, 897; also note 2 on p. 893.

Fraud, moreover, is charged and proven against appellant. This is always a ground of chancery jurisdiction, and relief, whether the party wronged be in or out of possession of the property in dispute.

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Fraud, moreover, is charged and proven against appellant. This is always a ground of chancery jurisdiction, and relief, whether the party wronged be in or out of possession of the property in dispute.

The averments of the petition and proof in the case at bar being sufficient under chapter 116 of the Revised Statutes of Illinois, to give the Circuit court jurisdiction, and the nature of the proceedings and relief sought being equitable, and fraud being charged and proven against the Gormleys, it follows, inevitably, that the court below had full jurisdiction. That, after having obtained jurisdiction, such court had the right to completely adjudicate upon all controverted matters between the parties, follows as a corollary.

1. Because the terms of the state act so authorized.

2. Because it is a well known rule that chancery having once acquired jurisdiction acquires it for all purposes, and may go on and do complete justice between contending parties, and will not force them to resort to a legal tribunal and by a second suit to settle their disputes.

In no event was it incumbent upon the Circuit court to drive the parties to the law side of the court. As the Supreme court of Illinois, said in

Gage et al. v. *Caraher*, *supra*, page 452:

"Whatever may be the power of the court of chancery "where there are controverted titles, to restore by its "decree, the evidences of the title in the respective parties "as they were before the destruction of the record, and "then, in its discretion, remit the parties to a court of law "to there try their titles, it is manifest, no such course "was contemplated by the statute or necessary in cases "under it."

Judge Blodgett's words in *Smith* v. *Gage*, *supra*, are likewise in point, viz.:

"It is possible that the court, on the final hearing of "such a case, may, in its discretion as a court of equity

"where two conflicting titles are presented, the validity "of which can be determined in a court of law, by the "express terms of its decree, remit the parties holding "such titles to a court of law for a trial of their rights, "but this would be surely a matter of equitable discre- "tion, and does not limit the power of the court in this "proceeding to settle the entire title by its decree."

The cases cited by appellant, we submit, are far from being in point. In *Lewis* v. *Cocks*, 23 Wall., 466, the court held that the proceeding was merely a bill in equity, and that

1st. The fraud charged was denied and not proven.

2d. That the legal remedy was equally effectual with the equitable remedy as to all the rights of the complainant.

3d. That the complainant sought to enforce "a merely "legal title."

In *Killian* v. *Ebbinghaus*, 110 U. S., 568, a bill in equity, the court held, "that an action of ejectment would "have afforded the appellee a plain and adequate rem- "edy."

The case of *Fussell* v. *Gregg*, 113 U. S. R., 550, was simply a suit in equity, where the complainant, having an equitable title, asked that merely upon the strength of such equitable title a defendant having a legal title be turned out of the possession of premises.

In none of these three cases was the relief afforded under a state statute, to be enforced as in the case at bar.

The circumstances stated and relief in the bill asked are such that no adequate, complete or equal remedy can be given at law. Moreover, the relief to be given is to be

under a state statute, and this court has repeatedly held that the Federal courts will administer in their own tribunals where the citizenship is such as to give jurisdiction of a case, relief extended through state enactments.

Clark v. *Smith*, *supra*.
Ex parte McNeill, *supra*.
Broderick's Will, *supra*.
Fitch v. *Creighton*, *supra*.
Reynolds v. *Crawfordsville First Nat. Bank*, *supra*.
Holland v. *Challen*, *supra*.

Counsel for appellant concedes that "the Supreme "court of Illinois has decided that under the Burnt Rec- "ord Act a complainant out of possession may file a peti- "tion against a defendant in possession." (Appellant's brief, 16.)

But counsel says these cases must be confined to special instances where the remedy at law is inadequate. The Illinois decisions are otherwise. Both legal and equitable titles are to be adjudicated in proceedings under the Burnt Record Act.

The vice of counsel's argument is that he forgets that the remedy at law, considering the nature of the relief contemplated by the Burnt Record Act, must necessarily always be inadequate, and not equal to that of a court of equity. No record can be restored in a court of law and title decreed as under this last named act.

It is immaterial that the relief afforded under the Burnt Record Act "is in conflict with the principle of "equity practice" (Appellant's brief, 16), as formerly administered. The State of Illinois has a right to

create a new equity, and the Federal courts will administer it.

Clark v. *Peters*, *supra*.
Reynolds v. *Bank*, *supra*.

But, says counsel, the Illinois act is then unconstitutional as depriving one of the right of trial by jury.

Under what constitution, or what article of what constitution, whether that of Illinois or that of the United States he claims this, counsel does not deign to state.

So far as the constitution of Illinois is concerned, this question is not an open one as we understand. The question has been squarely met and squarely settled by the Illinois Supreme court in

Heacock v. *Hosmer*, 109 Ill., 245, 250, 251,

where the court says: "As to the validity of the stat-
"ute, several cases which called in question its validity
"have been before the court, and it has uniformly been
"sustained. *Robinson* v. *Ferguson*, 78 Ill., 539; *Bert-*
"*rand* v. *Taylor*, 87 *id.*, 235; *Mulvey* v. *Gibbons*, *id.*, 367;
"*Heacock* v. *Lubuke*, 107 *id.*, 396.

"But it is said the statute deprived a party of a trial
"by jury, and upon this ground it is unconstitutional. The
"same question was raised in the case last cited, and we
"there held that the act was constitutional, and upon an
"examination of the constitutional provision bearing on the
"subject, the law as declared in that case would seem to
"be beyond dispute. The constitution of 1818 provided
"that 'the right of trial by jury shall remain inviolate.
"The constitution of 1848 provided that 'the right
"of trial by jury should remain inviolate, and shall
"extend to all cases at law, without regard to
"the amount in controversy.' Thus stood the organic

"law of the state at the time the constitution of 1870 was "adopted, and the instrument declared that "the right of "trial by jury, as heretofore enjoyed, shall remain invio- "late, but the trial of civil cases before justices of the "peace, by a jury of less than twelve, may be authori- "zed by law." Under this provision, the right of trial "by jury was preserved in all cases, and to all persons, "where that right had existed before its adoption. But "the constitutional provision of 1848 on this subject has "never been understood as applying to cases over which "courts of equity have jurisdiction. By its express terms "the right of trial by jury is confined to cases at law. "Indeed, from the organization of the state down to the "present time, our courts have exercised jurisdiction in "equity, and the practice has been uniform in such "courts to hear and determine causes without a jury, "and the right to do so has not been questioned or "denied. It has been a common practice for years to file "bills in equity to partition lands, and in a proceeding of "that character the court has ample power to settle all "conflicting titles, and that, too, without a jury. The "power conferred upon a court of equity by the Burnt "Records act is similar to a proceeding in equity for parti- "tion, and a proceeding under the former act is no more "obnoxious to the constitutional provision for a jury than "is a bill in equity for partition. This view of the question "is sustained by *Ward* v. *Farwell*, 97 Ill., 593, and Peti- "tion of Ferrier, 103 Ill., 367. But if it be true that ap- "pellant was entitled, under the constitution, to a trial by "jury, notwithstanding the statute, she is in no posi ion here "to complain of the statute or the decision of the court under "it. If she was entitled to a jury trial it was her duty to "demand a jury, and had the court refused her that right,

" then she would have been in a position to complain, but " she did not ask for a jury in the Circuit court, or in any " manner indicate to the court that she desired the matters " involved in the case submitted to a jury. We are there- " fore of the opinion, as no jury was demanded, the right " of trial by jury was waived.

In

Heacock v. *Lubuke*, 107 Ill., 396, 400,

the court says:

" But it is said the Burnt Records act is unconstitutional, " as it in effect deprives a party of the right of trial by " jury. Since the passage of the act its validity has been " sustained in a number of cases, and in *Bertrand* v. *Tay-* " *lor*, 87 Ill., 235, the law was held to be constitutional. " It will not be necessary, therefore, to enter upon a dis- " cussion of that question here."

Justice WALKER in concurring in this last opinion, said:

" Inasmuch as a jury was not demanded on the hear- " ing, the question of whether a jury should have been " allowed, does not arise in the case." (Page 404.)

In

Culver v. *Colehour*, 115 Ill., 558, 565,

the court said:

" This is not a common law proceeding, but a proceed- " ing under chapter 116 of the Revised Statutes of 1874, " and a jury trial is neither contemplated by it, nor indis- " pensable to the relief here decreed."

So far as the state constitution is concerned, we submit these decisions are final and conclusive, for we understand the doctrine of this court to be that whether or not the state constitution authorized the passage of a certain statute, what is the interpretation of such statute, and what

"law of the state at the time the constitution of 1870 was "adopted, and the instrument declared that "the right of "trial by jury, as heretofore enjoyed, shall remain invio- "late, but the trial of civil cases before justices of the "peace, by a jury of less than twelve, may be authori- "zed by law." Under this provision, the right of trial "by jury was preserved in all cases, and to all persons, "where that right had existed before its adoption. But "the constitutional provision of 1848 on this subject has "never been understood as applying to cases over which "courts of equity have jurisdiction. By its express terms "the right of trial by jury is confined to cases at law. "Indeed, from the organization of the state down to the "present time, our courts have exercised jurisdiction in "equity, and the practice has been uniform in such "courts to hear and determine causes without a jury, "and the right to do so has not been questioned or "denied. It has been a common practice for years to file "bills in equity to partition lands, and in a proceeding of "that character the court has ample power to settle all "conflicting titles, and that, too, without a jury. The "power conferred upon a court of equity by the Burnt "Records act is similar to a proceeding in equity for parti- "tion, and a proceeding under the former act is no more "obnoxious to the constitutional provision for a jury than "is a bill in equity for partition. This view of the question "is sustained by *Ward* v. *Farwell*, 97 Ill., 593, and Peti- "tion of Ferrier, 103 Ill., 367. But if it be true that ap- "pellant was entitled, under the constitution, to a trial by "jury, notwithstanding the statute, she is in no position here "to complain of the statute or the decision of the court under "it. If she was entitled to a jury trial it was her duty to "demand a jury, and had the court refused her that right,

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So far as the state constitution is concerned, we submit these decisions are final and conclusive, for we understand the doctrine of this court to be that whether or not the state constitution authorized the passage of a certain statute, what is the interpretation of such statute, and what

acts are justified under such statute, are to be decided exclusively by the highest court of the state.

Green v. *Neal*, 6 Peters, 291.
Elmendorf v. *Taylor*, 10 Wheat., 152.
Watson v. *Mercer*, 8 Peters, 88.
Jackson v. *Lamphire*, 3 Peters, 280.
Withers v. *Buckley*, 20 How., 84.
Porter v. *Foley*, 24 How., 415.
Medberry v. *Ohio*, 24 How., 413.
Salomons v. *Graham*, 15 Wall., 208.
Aicardi v. *State*, 19 Wall., 635.
Norton v. *Shelby County*, 118 U. S. R., 425.
Harpending v. *Dutch Church*, 16 Peters, 455.
McCluny v. *Silliman*, 3 Peters, 270.
Murray v. *Gibson*, 15 How., 421.

This court has also held in

Amy v. *Watertown*, (No. 1) 130 U. S. R., 301,

that in the construction of a state statute in a matter purely domestic, this court is always disposed to give great weight to the decisions of the highest tribunal of the state.

Again, this court has said in

Haurick v. *Patrick*, 119 U. S. R., 156, 170:

"Great weight, if not conclusive effect, in our opinion, "is to be given to these decisions of the Supreme court "of Texas upon question of the construction of the statutes "of the state as effecting titles to real estate within its "territory."

Again this court has held that the construction of a

state limitation law by the Supreme court of the state binds the United States Supreme court.

Sanger v. *Nightengale*, 122 U. S. R., 176.

The Supreme court of Illinois in

Bertrand v. *Taylor*, 87 Ill., 235, 238, held that the Burnt Record Act "is in effect a statute of limi-" tations."

Appellant cannot complain of any infringment of the constitution of the United States in the holding by the State court of Illinois that the Burnt Record Act is not unconstitutional in denying the right of a trial by jury. The seventh amendment to the federal constitution, relates exclusively to trials in the federal courts and the fourteenth amendment to the United States constitution is not violated by denying the right of trial by jury in common law cases in state courts relating to rights in property if the trial is had according to the settled course of judicial proceedings in such states as is done under the Burnt Record Act.

Walker v. *Sauvinet*, 92 U. S. R., 90.

Moreover, the fourteenth amendment aforesaid "can-" not have the effect of taking away from the states the " power of giving a court of equity jurisdiction in cases " requiring equitable relief."

Church v. *Kelsey*, 121 U. S. R., 283, 284.

The sole question then left is, did the Circuit court err in not giving appellant a trial by jury, owing to the provisions of the 7th amendment? We submit that it did not, for two reasons:

1st. Because no application was made for such trial, and it must be considered as waived.

2d. The case being essentially a chancery case, no right of trial was guranteed by said 7th amendment.

Basey et al. v. *Gallagher*, 20 Wall., 670.

3d. The court administering on the equity side of the count a statutory remedy under the 116 Chapter Rev. Stats. of Illinois, had a right to follow the decisions of the state Supreme court on the question of granting or not granting a jury trial.

II.

Counsel claims that Michael Gormley never relinquished his homestead rights in the portion of Adams St. which was vacated by the ordinance of October 4, 1881.

When Michael Gormley made, acknowledged and recorded the plat of Gormley's Addition to Glencoe, and subsequently deeded, his wife joining in the deed, blocks 8 and 9 abutting on said vacated portion of Adams street, to Adolph Loeb, as trustee, with full covenants of title and relinquishment of homestead rights, he and his wife thereby, by necessary implication, released their homestead rights in said portion of Adams street. For a grant of an easement in the said portion of said street, which was conveyed by the trust deed, is incompatible and inconsistent with the claim of homestead in the ground over which the right of easement extended.

The easement could not be exercised, and yet the homestead right in the street remain and be exercised. The right of way passed as an appurtenance to the blocks, and therefore clear of homestead rights.

Smyth on Homestead and Exemption, § 303, p. 243.

This point was decided in the case of

Kittle v. *Pfeiffer*, 22 Cal., 484,

where "P" executed to the city a quitclaim deed of certain strips of land to be used as public highways under the name of Belle Air Place and Pfeiffer street, the same being part of a city lot occupied by himself and wife as a homestead. Afterwards the parcels then sold never having been opened or used as public highways, Pfeiffer and wife executed a mortgage upon their homestead, discribing it as bounded in part by a line running a certain course and distance "to Belle Air Place, and thence a "certain course and distance to Pfeiffer street." The mortgaged premises were sold under an action to which the husband and wife were parties.

It was held that the mortgage was a dedication of the streets named as public highways, and vested in them a right of way, and that the homestead claim was barred by the foreclosure and sale, and that the right of way passed to the purchasers as an appurtenance of the lot, and therefore free of the claim of homestead.

That the homestead right in that portion of Adams street vacated was extinguished, seems to be the inevitable result, whether the fee in such portion of the street passed to the village of Glencoe or to appellee, as the owner of blocks 8 and 9 abutting on that portion of Adams street so vacated. The fee in the street was extinguished, so far as Gormley was concerned, and with the fee must have passed the homestead right as appurtenant, as we have said, to blocks 8 and 9.

Hamilton et al. v. *C., B. & Q. R. R. Co. et al.*, 124 Ill., 235.

Zinc Company v. *City of LaSalle*, 117 Ill., 411.
Trickey v. *Schlader*, 52 Ill., 78.

Appellant below claimed that the plat of Gormley's addition to Glencoe was defective, and, therefore, not a statutory plat. He now seems to claim exactly the opposite.

As we have said, the case of the *Village of Winnetka* v. *Prouty*, *supra*, was not in point.

The plat was certified, surveyed and acknowledged according to law. The streets were worked on by the village, sidewalks were built, streets thrown up, conveyances to various parties were made, among them to Loeb, under whom appellee claims. It would seem that the dedication was completely statutory, and in any event, as the court held, Gormley was estopped to claim any defects in the dedication.

Town of Lake View v. *LeBahn*, 120 Ill., 92.
Littler v. *City of Lincoln*, 106 Ill., 353.
Maywood Company et al. v. *Village of Maywood*, 118 Ill., 61.
Lee v. *Mound Station*, 118 Ill., 304.

As far as the case at bar is concerned, it makes no difference whether the plat was a statutory plat or not—whether the fee in any street or part of a street vested in the village, the abutting property owners, remained in Gormley, or on vacation reverted to Gormley. An easement was created in all the streets in favor of abutting property owners.

Zearing v. *Raber*, 74 Ill., 411.
Littler v. *City of Lincoln*, 106 Ill., 353.

Smith's Leading Cases, Vol. 2, p. 154 (Hare & Wallace's Notes).

Smith's Leading Cases (8th Ed.), Vol. 2, part 1, pp. 160, 161 and 178.

This interest was of such a nature that equity would protect abutting property owners by injunction upon any invasion of their rights.

City of Jacksonville v. *Jacksonville Rw. Co.*, 67 Ill., 540.

Zearing v. *Raber*, 74 Ill., 409.

Zinc Co. v. *City of La Salle*, 117 Ill., 411.

Maywood Co. v. *Village of Maywood*, 118 Ill., 61.

III.

The sole remaining question seems to be as to whether the court was justified in ordering a writ of assistance to issue.

The court certainly had jurisdiction to prevent the perversion of the trust upon which the streets were held, and to abate and prevent any further nuisance by preventing the use of the streets.

City of Jacksonville v. *Jacksonville Rw. Co.*, *supra.*

Zearing v. *Raber*, *supra.*

Zinc Co. v. *City*, *supra.*

Maywood Co. v. *Village of Maywood*, *supra.*

The rights of the parties had been adjusted in full by a final decree. The court had decreed that so much of Adams street as was vacated by the ordinance of October 4, 1881, was "subject to the easement in, and the right

Zinc Company v. *City of LaSalle*, 117 Ill., 411.
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Maywood Company et al. v. *Village of Maywood*, 118 Ill., 61.
Lee v. *Mound Station*, 118 Ill., 304.

As far as the case at bar is concerned, it makes no difference whether the plat was a statutory plat or not—whether the fee in any street or part of a street vested in the village, the abutting property owners, remained in Gormley, or on vacation reverted to Gormley. An easement was created in all the streets in favor of abutting property owners.

Zearing v. *Raber*, 74 Ill., 411.
Littler v. *City of Lincoln*, 106 Ill., 353.

Smith's Leading Cases, Vol. 2, p. 154 (Hare & Wallace's Notes).

Smith's Leading Cases (8th Ed.), Vol. 2, part 1, pp. 160, 161 and 178.

This interest was of such a nature that equity would protect abutting property owners by injunction upon any invasion of their rights.

City of Jacksonville v. *Jacksonville Rw. Co.*, 67 Ill., 540.

Zearing v. *Raber*, 74 Ill., 409.

Zinc Co. v. *City of La Salle*, 117 Ill., 411.

Maywood Co. v. *Village of Maywood*, 118 Ill., 61.

III.

The sole remaining question seems to be as to whether the court was justified in ordering a writ of assistance to issue.

The court certainly had jurisdiction to prevent the perversion of the trust upon which the streets were held, and to abate and prevent any further nuisance by preventing the use of the streets.

City of Jacksonville v. *Jacksonville Rw. Co.*, *supra.*

Zearing v. *Raber*, *supra.*

Zinc Co. v. *City*, *supra.*

Maywood Co. v. *Village of Maywood*, *supra.*

The rights of the parties had been adjusted in full by a final decree. The court had decreed that so much of Adams street as was vacated by the ordinance of October 4, 1881, was "subject to the easement in, and the right